TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 605.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD ET AL., APPELLANTS,

vs.

JOHN H. MARTINDALE, R. S. BURROWS, JOHN STRYKER, AND THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED FEBRUARY 2, 1872.

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INDEX.

	Original.	Print.
Bill	4	1
Exhibits to bill	20	5
Record entry, October term, 1870	46	21
Amendment to bill	48	22
Injunction bond	49	22
Demurrer to bill	52	23
Stipulation	55	24
Answer to bill	57	25
Replication	73	28
Decree	75	29
Supersedeas bond	76	29
Stipulation	79	30
Defendants' evidence, briefs	82	31
Evidence in Williams vs. Baker	114	40
Clerk's certificate	521	443

3 Pleas in the circuit court of the United States in and for the district of Iowa, at a term thereof begun and holden in the United States court-house in the city of Des Moines, in said district, on the second Tuesday, the 9th day of May, A. D. 1871, before the Honorable John F. Dillon, judge of the United States circuit court for the eighth circuit, on Wednesday the 31st day of May, in the year of our Lord one thousand eight hundred and seventy-one.

4 Be it remembered that, heretofore, to wit, on the 18th day of May, A. D. 1870, came The Cedar Rapids and Missouri River Railroad Company, Louis Bolle, William Enfield, Hiram Lucas, Enos Bennett, Perry Scott, and J. F. Alexander, by their solicitors, Messrs. Isaac Cook and N. M. Hubbard, and filed in the clerk's office of the circuit court of the United States for the district of Iowa their bill for an injunction against John H. Martindale, Roswell S. Burrows, John Stryker, and the Des Moines Navigation and Railroad Company, which said bill is in words and figures following, to wit:

Petition in equity.

United States circuit court, 9th circuit, district of Iowa.

CEDAR RAPIDS AND MISSOURI RIVER RAILroad Company, Louis Bolle, William Enfield, Hiram Lucas, Enos Bennett, Perry Scott, & J. F. Alexander, complainants,
against
5 JOHN H. MARTINDALE, ROSWELL S. Burrows, John Stryker, & the Des Moines Navigation and Railroad Company, defendants.

To the Honorable John F. Dillon and James M. Love, judges of the circuit court of the United States for the 8th circuit, district of Iowa:

The above-named complainants respectfully show to the court the following:

Paragraph 1. There have been commenced in this court, on the law side thereof, the following actions of right: John H. Martindale against Louis Bolle, to recover the possession & title to the N. E. q'r of N. E. q'r sec. 33, t'p 82 N., R. 25 west; Roswell S. Burrows against William Enfield, to recover the possession and title to the S. W. ¼ of sec. 11, t'p 83 north, of range 27 west; John Stryker against Enos Bennett,
6 to recover the possession and title to the south half of the N. E. quarter sec. 11, t'p 83 N., range 26 west; John Stryker against Hiram Lucas to recover the title and possession of the N. E. q'r of the N. E. q'r sec. 11, t'p 83 N., of range 26 west; also two certain suits on the chancery side of this court have been commenced by Roswell S. Burrows, one against Perry Scott, to quiet the title in said Burrows, to the and one against J. F. Alexander, to quiet the title in said Burrows to the S. W. q'r S. W. q'r sec. 33, t'p 85 N., R. 26 west.

The defendants in said actions and suits are complainants herein, and each of their said titles by which they claim to own and hold the
7 lands in controversy above described is derived from the complainant the Cedar Rapids and Missouri River Railroad Company, which derived its title from the United States, as hereinafter set forth.

The plaintiff in each of said actions and suits pretend to have derived their respective titles from the defendant, the Des Moines Navigation and Railroad Company, which pretends to have derived its title from the United States. Each of the said actions and suits involve only one and precisely the same question, namely, whether said Cedar Rapids and *the* Missouri River Railroad Company, or the said Des Moines Navigation and Railroad Company, at the times of making conveyances to the plaintiffs and defendants in said actions and suits respectively, was the real and rightful owner of the lands above described. Each of the defendants in the above-named actions and suits are in the actual possession and occupancy of the premises respectively claimed by them, and have each made valuable improvements thereon.

8 Par. 2. By virtue of an act of Congress, approved May 15, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and several other acts of Congress subsequent thereto upon the same subject, said premises in controversy, amongst others, were granted to the State of Iowa. By virtue of an act of the legislature of the State of Iowa, approved March 26, 1860, entitled "An act to carry into execution the trust conferred upon the State of Iowa, in respect to the lands granted by an act of Congress approved May 15, 1856, to aid in

9 the construction of a railroad from Lyons City across the State of Iowa, and near the forty-second parallel, to the Missouri River," and several other previous and subsequent acts of said legislature upon the same subject and confirmatory thereof, the said premises in controversy, amongst others, were granted to complainant Cedar Rapids & Missouri River Railroad Company.

The said several acts of Congress and of the legislature of Iowa, for convenience and greater certainty, are hereto annexed, as Exhibits B, C, F, G, I, J, K, L, & M.

Par. 3. Complainant Cedar Rapids & Missouri Railroad Company built and constructed the railroad mentioned in said several acts of Congress and of the State legislature, in all respects in accordance with the several provisions thereof, and obtained the certificate of the governor of the State of Iowa to that effect, as provided by said acts; and also

10 the certification of the premises in controversy, and herein described, amongst others, to the State of Iowa by the proper officer of the United States, as provided by law; whereby complainant Cedar Rapids & Missouri River Railroad Company became seized in fee of the above-described premises, and afterwards conveyed by deed to its co-complainants the tracts now respectively claimed by them.

Par. 4. Notwithstanding the good and perfect title of complainants to said premises, the Des Moines Navigation & Railroad Company and its grantees & co-defendants herein pretend to own, and assert title to the same, by virtue of an act of Congress approved August 8th, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," and several subsequent acts of Congress & the State legislature, copies of which are hereto annexed, as Exhibits A, D, E, & H.

11 But complainants aver that the several tracts of land in controversy are not, and never were, a part of, or within the limits of, the grant of lands made to the State of Iowa by virtue of the act of August 8th, 1846, or by any other act of Congress for the improvement of the Des Moines River, and the said defendants, or any of them, ever had any title whatever to the lands here in suit.

Par. 5th. And complainants further state and aver that the defend-

ant, the Des Moines Navigation & Railroad Company, fraudulently & collusively with the plaintiffs therein caused two suits to be commenced & prosecuted against itself, in the circuit court of the United States for the southern district of the State of New York, in the years 1864 & 1865, one by Calvin Burr, and the other by Samuel G. Wolcott; that afterwards such proceedings were had in said court and the Supreme Court of the United States in said causes that, at the December
12 term of said Supreme Court for the year A. D. 1866, the said Des Moines Navigation & Railroad Company was adjudged to have the titles to the lands then in controversy in said suits, which titles were derived through the same source, and by virtue of the same act of Congress, as the lands above described herein, and none others or different.

And complainants further aver that, at the time of the commencement and final decision, as aforesaid, of the Burr and Wolcott cases, the said Des Moines Navigation and Railroad Company was, and still is, a corporation organized under the laws of the State of Iowa only, and a citizen of said State of Iowa; that it was then, and is now, insolvent, unless it can sustain its claim of title to the lands of the Des Moines grant above the mouth of the Raccoon Fork of the Des Moines River; that the said Burr and the said Wolcott were both interested in maintaining the claim of title of said company to the lands last mentioned, and that the purpose of said actions between the said
13 Burr and Wolcott, and the said company and all of the parties thereto, was to obtain rulings and opinions from the court in favor of said title, in the absence of these complainants and all others who were interested in contesting the same, and that in neither of the said causes was there any earnest controversy or real litigation between the parties thereto; that the said Des Moines Navigation and Railroad Company has paid a large part, or the whole, of the costs and expenses of the said litigation, notwithstanding the final judgments were against the said Burr and Wolcott, which costs and expenses have been so paid, in pursuance of an agreement between the said parties before the commencement of said actions; that, in the trial of said causes, the said parties failed to offer in evidence or bring to the attention of the courts the construction given by the Congress of the United States and the legislature of the State of Iowa, as well as the State and Federal executive officers, to the act of May 15, 1856, and the action
14 of the executive officers under that act, and also under the joint resolution of March 2, 1861, and the act of July 12, 1862, by which the lands in controversy herein, with other lands, were certified to the State of Iowa as part of the grant under the act of May 15, 1856, as well as other important facts tending to sustain the issues on the part of said Burr and said Wolcott, amongst which were the following:

1. The special certificate of the Commissioner of the General Land Office of April 25, 1863, authorizing the State of Iowa to select 300,000 acres of indemnity lands, which were mainly in lieu of the lands near the Des Moines River, claimed by the said Des Moines Navigation and Railroad Company, but before that time certified to the State of Iowa as a part of the grant of May 15, 1856, and the subsequent certification of the said indemnity lands to the State of Iowa.

2. The settlement between the U. S. and the State of Iowa,
15 made in the year 1866, commonly known as the "Harvey settlement," whereby the claims of the State of Iowa against the United States for lands enuring under the several acts of Congress, granting

lands to said State, were adjusted, and whereby was secured to the State nearly 300,000 acres of *of* said indemnity lands, in lieu of the lands granted by the act of May 15, 1856, to the several railroads of Iowa lying above the mouth of the Raccoon Fork of the Des Moines River, which lands were by the State to be used to make good the deficiency of the grant for the improvement of the Des Moines River, under the act of August 8th, 1846, and July 12, 1862, by reason of the grant to railroads under the act of May 15th, 1856.

3. The facts that the lands in controversy in this suit had been certified to the State of Iowa, for the benefit of the complainant, the Cedar Rapids and Missouri River Railroad, although stated, was so feebly stated, that it made no figure in the cases, and was not
16 relied upon by either of said plaintiffs; whereas, by the act of July 12, 1862, it was made the duty of the Secretary of the Interior to determine what lands had passed to the State by the act of May 15, 1856; and his action in construing the two acts last mentioned, and in certifying the said lands under the act of May 15, 1856, as aforesaid, was and is conclusive and binding upon the courts.

Complainants therefore charge that the two causes mentioned in this paragraph were fictitious and fraudulent, and not for the purpose of litigating real questions between the parties, but were devices by which the courts were imposed upon and induced to give an erroneous construction to the said acts of Congress, and that the judgments and opinions rendered in said cases are not precedents or authority in any court or place upon questions affecting the rights of these complainants; yet the said defendants, notwithstanding the facts in this para-
17 graph stated, claim and pretend that the judgments and opinions in the said Wolcott and Burr cases are an authoritative construction of the said laws, and upon this pretense have commenced the suits and actions aforesaid, and design and intend to use them as such precedents upon the hearing of the causes mentioned in the first paragraph hereof, well knowing that the said judgments and opinions were obtained in the manner above stated.

Par. 6. The claimants therefore say that, as they are advised and believe, they have no adequate remedy for the grievances herein above mentioned, save in a court of equity; and, in order to save costs and avoid a multiplicity of suits, they therefore ask that each of the defendants above named be made parties defendant herein, and required to answer to the matters and things herein contained, except the plaintiff in the chancery suit, above named, and as to said chan-
18 cery suits, that the same be consolidated herewith, and tried and determined in this proceeding.

Complainants pray that a temporary injunction issue to restrain and enjoin the trial of said actions at law, and all others that may be commenced in this court to establish the same title, until all the matters in this bill be first heard and determined, and that on the final hearing of this bill the defendants, and each of them, and all persons like interested, may be perpetually enjoined from prosecuting further suits against complainant Cedar Rapids & Mo. R. R. R. Co., & its grantees for the lands in controversy, and all of lands of said complainant the title to which is derived by the same source, and that complainant's title to said lands, and all lands so derived, be quieted in them and their grantees forever, or for such further and other relief as, in equity, complainants may be entitled.

ISAAC COOK,
Sol. for Complainants.

19 STATE OF IOWA, *Polk County, ss:*

I, Isaac Cook, being duly sworn, on oath say that I am the att'y for the complainants in the foregoing bill; that I know the contents of said bill; that I have personal knowledge and information of the facts set out therein, equal to any officer of said Cedar Rapids and Missouri River Railroad Company, and am in all respects as well advised as to the matters therein as any of said complainants, and that the facts therein stated are true as I verily believe.

ISAAC COOK.

Subscribed and sworn to before me this 18th day of May, 1870.

GEORGE B. CORKHILL, *Clerk.*

(Endorsed:) Filed May 18, 1870.

GEORGE B. CORKHILL, *Clerk.*

20 *Exhibits to the foregoing bill.*

EXHIBIT A.

(9 Stat. at Large, 77.)

An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold, and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river; to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SEC. 2. *And be it further enacted,* That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease, until the governor of said Territory or State shall certify the fact to the President of the United States, that one-half of said sum has been expended upon said improvement, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SEC. 3. *And be it further enacted,* That the said River Des
21 Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charges whatever for any property of the United States, or persons in their service, passing through or along the same: *Provided always,* That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower

than, for the time being, shall be the minimum price of other public lands.

SEC. 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State, for the purpose contemplated in this act, and no other: *Provided*, The legislature of the State of Iowa shall accept the said grant for the said purpose.

Approved August 8, 1846.

EXHIBIT B.

(10 Stat. at Large, 346.)

An act to vest in the several States and Territories the titles in fee of the lands which have been or may be certified to them.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases where lands have been, or shall hereafter be, granted by any law of Congress to any one of the several States and Territories—and where said law does not convey the fee-simple title of such lands, or require patents to be issued therefor—the lists of such lands which have been or may hereafter be certified by the Commissioner of the General Land Office, under the seal of said office, either as originals or copies of the originals or records, shall be regarded as conveying the fee-simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

Approved August 3, 1854.

22 EXHIBIT C.

(11 Stat. at Large, 9.)

An act making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of certain railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River; from the city of Davenport, via Iowa City and Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri River, from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the

United States have, when the lines or routes of said roads are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State to select, subject to the approval of the Secretary to the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and [to] which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid; *Provided*, That the land to be so located shall, in no case, be further that fifteen miles from the lines of said roads, and selected for and on account of each of said roads;
23 *Provided further*, That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever; *And provided further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purpose aforesaid, and no other; and the said railroad' shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads, having twenty continuous miles completed as aforesaid, and included within a continuous
24 length of twenty miles of each of such roads may be sold, and so from time to time until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall

be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may by law direct; *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved May 15, 1856.

EXHIBIT D.

(12 Stat. at Large, 251.)

Joint resolution to quit title to lands in the State of Iowa.

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly, by the Department of the Interior, as part of the grant by act of Congress approved August eight, eighteen hundred and forty-six, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

Approved March 2, 1861.

25 EXHIBIT E.

(12 Stat. at Large, 543.)

An act confirming a land claim in the State of Iowa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of Aug. eight, eighteen hundred and forty-six, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Fork and the northern boundary of said State; such lands are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March twenty-two, eighteen hundred and fifty-eight. And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March second, eighteen hundred and sixty-one, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State, to be certified in lieu thereof: *Provided*, That if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act shall inure to, and be held as a trust-fund for the benefit of, the person or persons respectively whose titles shall have failed as aforesaid.

Approved July 12, 1862.

EXHIBIT F.

26 (Laws of 1863–'4, p. 96, approved June 2, 1864.)

Sec. 4 of an act to amend an act entitled "An act making a grant of land[s] to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May fifteen, eighteen hundred and fifty-six.

SEC. 4. *And be it further enacted*, That the Cedar Rapids and Missouri River Railroad Company, a corporation established under the laws of the State of Iowa, and to which the said State granted a portion of the land mentioned in the title to this act, may modify or change the location of the uncompleted portion of its line, as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more expeditious line to the Missouri River, and to a connection with the Iowa branch of the Union Pacific Railroad; and for the purpose of facilitating the more immediate construction of a line of railroads across the State of Iowa, to connect with the Iowa branch of the Union Pacific Railroad Company, aforesaid, the said Cedar Rapids and Missouri River Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi and Missouri Railroad Company; and the said Cedar Rapids and Missouri River Railroad Company shall be entitled for such modified line to the same lands and to the same amount of lands per mile, and for such connecting branch the same amount of land per mile, as originally granted to aid in the construction of its main line, subject to the conditions and forfeitures mentioned in the original grant, and, for the said purpose, right of way through the public lands of the United States is hereby granted to said company: *And it is further provided*, That whenever said modified main line shall have been established or such connecting line located, the said Cedar Rapids and Missouri River Railroad Company shall file in the General Land Office of the United States a map definitely showing such modified line and such connecting branch aforesaid; and the Secretary of the Interior shall reserve and cause to be certified and conveyed to said company, from time to time, as the work progresses on the main line, out of any public lands now belonging to
27 the United States, not sold, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement has not attached, and on which a bona-fide settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within fifteen miles of the original main line, an amount of land equal to that originally authorized to be granted to aid in the construction of the said road by the act to which this is an amendment. And if the amount of lands per mile granted, or intended to be granted by the original act, to aid in the construction of said railroad shall not be found within the limits of the fifteen miles therein prescribed, then such selections may be made along said modified line and connecting branch within twenty miles thereof: *Provided, however*, That such new located or modified line shall pass through or near Boonsboro', in Boone County, and intersect the Boyer River not further south than a point at or near Dennison, in Crawford County: *And provided, further*, That in case the main line shall be so changed or modified as not to reach the Missouri River at or near the forty-second parallel north latitude, it shall be the duty of said company, within a reasonable time after the completion of its road to the

Missouri River, to construct a branch road to some point in Monona County, in or at Onawa City; and to aid in the construction of such branch, the same amount of lands per mile are hereby granted as for the main line, and the same shall be reserved and certified in the same manner; said lands to be selected from any of the unappropriated lands as hereinbefore described within twenty miles of said main line and branch; and said company shall file with the Secretary of the Interior a map of the location of the said branch: *And provided, further*, That the lands hereby granted to aid in the construction of the connecting branch aforesaid shall not vest in said company nor be encumbered or disposed of except in the following manner: When the governor of the State of Iowa shall certify to the Secretary of the Interior that said company has completed in good running order a section of twenty consecutive miles of the main line of said road west of Nevada, then the Secretary shall convey to said company one-third, and no more, of the lands granted for said connecting branch. And when said company shall complete an additional section of twenty consecutive miles, and furnish the Secretary of the Interior with proof as aforesaid, then the said Secretary may convey to the said company another third of the lands granted for said connecting branch; and when said company shall complete an additional section of twenty miles, making in all sixty miles west of Nevada, the Secretary, upon proof furnished as aforesaid, may convey to the said company the remainder of said lands to aid in the construction of said connecting branch: *Provided, however*, That no lands shall be conveyed to said company on account of said connecting branch road until the governor of the State of Iowa shall certify to the Secretary of the Interior that the same shall have been completed as a first-class railroad. And no land shall be conveyed to said company situate and lying within fifteen miles of the original line of the Mississippi and Missouri Railroad, as laid down on a map on file in the General Land Office: *Provided further*, That it shall be the duty of the Secretary of the Interior, and he is hereby required, to reserve a quantity of land embraced in the grant described in this section, sufficient, in the opinion of the governor of Iowa, to secure the construction of a branch railroad from the town of Lyons, in the State of Iowa, so as to connect with the main line in or west of the town of Clinton, in said State, until the governor of said State shall certify that said branch railroad is completed according to the requirements of the laws of said State: *Provided further*, That nothing herein contained shall be so construed as to release said company from its obligation to complete the said main line within the time mentioned in the original grant: *Provided further*, That nothing in this act shall be construed to interfere with, or in any manner impair, any rights acquired by any railroad company named in the act to which this is an amendment, or the rights of any corporation, person or persons, acquired through any such company; nor shall it be construed to impair any vested right of property, but such rights are hereby reserved and confirmed: *Provided, however*, That no lands shall be conveyed to any company or party whatsoever, under the provisions of this act and the act amended by this act, which have been settled upon and improved in good faith by a bona-fide inhabitant, under color of title derived from the United States or from the State of Iowa adverse to the grant made by this act or the act to which this act is an amendment; but each of said companies may select an equal quantity of public lands, as described in this act, within the distance of twenty miles of the line of each of said roads, in lieu of lands thus settled upon and

improved by bona-fide inhabitants in good faith under color of title as aforesaid.

Approved June 2, 1864.

Exhibit G.

(Approved March 3, 1865. Laws 1864–5, p. 528.)

Section 10 of an act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes.

Sec. 10. *And be it further enacted*, That the time mentioned in an act entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," for the completion of the railroads named in said act, be, and the same is hereby, extended two years.

Approved March 3, 1865.

Exhibit H.

(Laws of Iowa, 1858, p. 427.)

Joint resolution containing propositions for a settlement with the Des Moines Navigation and Railroad Company.

Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen, and do now exist, between the State of Iowa and said company, and it being conceived to be to the interests of all parties concerned to have said matters, and all matters and things between said company and the State of Iowa, settled and adjusted: Now, therefore,

Be it resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water-rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company, and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress approved August 8th, 1846, to the then Territory of Iowa, to aid in the imp'ovement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company, or its assignees, shall have right to all of said lands as herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations,

omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are 25,487.87 acres, lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa.

And it is further agreed that said company release and convey to the State of Iowa or its representatives all materials of every kind and description prepared for or intended for the construction of locks
31 or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date, beyond the percentage retained from contractors under their agreements; and the said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement, (as fast as he may require the same to liquidate existing liabilities against said Des Moines River improvement,) on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement, not exceeding in amount the sum of eleven thousand dollars, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: *Provided*, That no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity; but all such liabilities, if any, shall be chargeable upon, and payable out of, the remaining lands belonging to the Des Moines River grant; *And provided, also*, That, if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State so as to become subject to grant, the said remaining lands, after the payment of all the liabilities as aforesaid against said improvement, and the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines, and Minnesota Railroad Company to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided further*, That if the said Des Moines Navigation and Railroad Company shall ratify
32 and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution, then this contract shall be in force, and bind both of the parties thereto.

Approved March 22, 1858.

EXHIBIT I.

(Laws of Iowa, 1856, p. 1.)

An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856.)

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the lands, rights, powers, and privileges granted to and conferred upon the State of Iowa, by the act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State, approved May 15th, 1856," be, and the same are hereby, accepted upon the terms, conditions, and restrictions, contained in said act of Congress.

SEC. 2. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington on the Mississippi River to a point on Missouri near the mouth of Platte River, are hereby disposed of, granted, and conferred upon the Burlington and Missouri River Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Davenport, via Iowa City and Ft. Des Moines, to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Missi-
33 sippi and Missouri Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Iowa Central Air-Line Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the governor of the State of Iowa, and also in the office of the secretary of state of the State of Iowa. It shall be the duty of the governor, after affixing his official

signature, to file such map in the department having control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the com-
34 pensation of such agents and the costs, expenses, and charges attendant upon and occasioned by making such selections shall be fixed, regulated, paid, and borne by each of said railroad companies respectively, upon and for its own line.

SEC. 7. The Iowa Central Air-Line Railroad Company shall furnish, equip, and operate the branch of their railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road, near Maquoketa, in the same manner with their main line from the west, and as completely as though the same was a continuation of said main line, and shall never give any preference to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch to their railroad.

SEC. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition that, in case either of such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then, and in that case, it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and the remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 9. The roads aforesaid shall be constructed upon a *guage* with a width of four feet, eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said roads shall be completed and finished in a style and of a quality equal to the average of other first-class western roads, and when the roads, or any of them, authorized to be constructed by this act shall be intersected by the roads of any other railroad company now constructed or hereafter to be constructed, it shall be the duty of such road or roads receiving the benefit of this act to furnish all proper and reasonable facilities, and to join such other company in making all necessary crossings, turn-
35 outs, sidelings, and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefited by this act, or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

SEC. 10. All persons who, at the time said grant was made, held valid claims by actual*ly* occupation and improvement upon any of the lands embraced in said grant shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person wishing to avail himself of the provisions of this act shall, within three months of the passage thereof, file his application for that purpose with the judge of the county where such lands may be situate, and shall prove to the satisfaction of said judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made, such judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder, or his bone-fide assignee, to enter such land at the rate of two dollars and fifty cents per acre: *Provided*, That no person, claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act: *And provided further*, That the person asserting a claim, whether as claimant or assignee, shall file his affidavit that he has not, either directly or indisectly, received the benefits of the provisions of this act. Before any rights shall be acquired under such certificate, a copy of the same, together with the evidence, shall be served on the secretary of the company interested, and such company shall have the right to appeal from the decision of such judge to the district court, in the same manner as appeals are taken from the decisions of justice of the peace, at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the supreme court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate, on being filed with the secretary of the company upon whose line of road such lands may be situate,
36 when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the possession of said land until the title shall become vested in the company. Upon payment thereafter to the treasurer of the company for said land at the price above designated such person shall receive from the secretary of the company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book by him kept for the recording of articles of association.

SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the general assembly of Iowa not inconsistent with the provisions of this act and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefits of this act to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the secretary of state.

SEC. 16. *Be it further enacted*, That any of said companies accepting the grants of lands under this act shall take the same with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumberances, or conditions of this act imposed.

37 SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa City Republican.

Approved July 14th, 1856.

I certify that the foregoing act was published in the Iowa Capital Reporter and Iowa City Republican on the 16th day of July, 1856.

GEO. W. McCLEARY,
Secretary of State.

EXHIBIT K.

(Laws of Iowa, 1860, p. 29.)

An act to resume all rights conferred upon the Iowa Central Air-Line Railroad Company by an act approved July 14th, 1856, and to repeal certain laws in relation thereto.

Whereas, by the act of Congress approved May 15th, 1856, there were granted to the State of Iowa certain lands to aid in the construction of certain railroads in said State, upon certain terms, conditions, and restrictions under which said lands might be disposed of; and

Whereas the general assembly of the State of Iowa, by an act approved July 14th, 1856, accepted said grant of land upon the terms, conditions, and restrictions contained in said act of Congress, and contracted with the Iowa Central Air-Line Railroad Company for the sale upon certain terms of that portion of said lands granted by said act of Congress to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River; in consideration of the undertaking on the part of said company, and subject to the conditions and restrictions contained in said act, and the act of Congress aforesaid; and

Whereas, the said Iowa Central Air-Line Railroad Company has wholly failed to perform on their part the conditions of said acts,

38 and has utterly failed to construct any part of said railroad as required by law and by the terms of their contract; and has failed to complete and equip any portion of said road, thereby, at the option of said State, annulling all their rights to the lands and privileges under and by virtue of said acts, by reason whereof the State of Iowa has the right to resume all said rights and privileges and all the rights in relation to said lands so as aforesaid conferred upon said company by said State; and

Whereas no part of said lands have been actually conveyed by this State to said company, nor by said company disposed of pursuant to the provisions of said acts; and inasmuch as the interest of the State in said lands and the construction of the road to aid which said lands were granted by Congress, as also the good faith of the State in executing the trust confided to it by Congress, require that the State should resume said rights and privileges, and all rights to the lands aforesaid: Now, therefore—

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That all rights to the lands, interests, rights, powers, and privileges heretofore conferred, or intended to be, upon the Iowa Central Air-Line Railroad Company by an act approved July 14th, 1856, entitled "An act to accept of the grant and carry into execution the trust conferred

upon the State of Iowa by an act of Congress, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State,' approved May 15th, 1856," be, and the same are hereby, absolutely and entirely resumed by the State.

SEC. 2. The fourth section of said act approved July 14th, 1856, and all other acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the Daily Iowa State Register and Daily Iowa State Journal, published at the city of Des Moines.

Approved March 17th, 1860.

I hereby certify that the foregoing act was published in the Daily Iowa State Register March 21st, 1860, and in the Daily Iowa State Journal March 22d, 1860.

ELIJAH SELLS,
Secretary of State.

39 EXHIBIT L.

(Laws of Iowa, 1860, p. 40.)

An act to carry into execution the trust conferred upon the State of Iowa in respect to the lands granted by an act of Congress approved May 15th, 1856, to aid in the construction of a railroad from Lyons City across the State of Iowa, and near the forty-second parallel, to the Missouri River.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That so much of the lands, interest, rights, powers, and privileges as have been or may be granted and conferred in pursuance of the act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15th, 1856, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa; thence on said main line running as near as practicable to the forty-second parallel, across the State of Iowa to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Cedar Rapids and Missouri River Railroad Company, a body corporate created and existing under the laws of the State of Iowa: *Provided, however*, That no portion of the grants of land provided for in this act shall be applied to the liquidation of any debt or obligation heretofore made or contracted by the said Cedar Rapids and Missouri River Railroad Company, or of the Chicago, Iowa and Nebraska Railroad Company: *Provided further*, That it is hereby declared to be the true intent and meaning of this act that the State of Iowa, according to the conditions herein specified, conveys and grants to the Cedar Rapids and Missouri River Railroad Company her right, title to, and interest in the aforesaid lands, and nothing more; and in no event shall said company have any claim or recourse against the State for any defect in the title or conveyance of said lands.

SEC. 2. The grant by this act conferred upon said company is made upon the express condition that in case said company shall fail to have completed and equipped forty miles of its road along the route aforesaid, and west from some convenient point on the Cedar River, near the

42d parallel, within one year from the first day of December
40 next, after the passage of this act, thirty miles in addition each year thereafter, for two years, and the remainder of their whole line of road in two years thereafter, or by the first day of December, 1865, then, and in that case, it shall be competent for the State of Iowa to resume all rights conferred by this act upon said company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of to the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 3. The provisions of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth sections of the first chapter of the laws of Iowa, passed at the extra session of the fifth general assembly, and approved July 14th, 1856, so far as the same are applicable to this company under the provisions of this act, and the one hundred and eighty-second chapter of the laws of this State, enacted by the sixth general assembly, and approved January 28th, 1857, and the eighty-fifth chapter of the laws of this State, enacted by the seventh general assembly, and approved March 20, 1858, so far as said enactments are not inconsistent with the provisions of this act, be, and the same are hereby, made applicable to this company receiving the benefits of the grant hereby conferred; and it is further provided that said railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; and if the said company shall accept this grant upon the condition aforesaid, which acceptance shall appear by an express writing, under the seal of said corporation, with the signatures of its president and secretary, and shall be filed in the office of the secretary of the State of Iowa within ninety days after the approval of this act by the governor, it shall take the same, with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances, or conditions in this act imposed.

SEC. 4. It is hereby further provided that said Cedar Rapids and Missouri River Railroad Company shall be entitled to the full amount of land authorized by said act of Congress, as the work progresses, for the first three sections of road, of twenty miles each, which shall
41 be constructed by said company; but thereafter, as the work progresses, they shall be entitled to an equal pro-rata apportionment of the lands remaining subject to appropriation in aid of this work, to be ascertained by a division of the quantity of lands so remaining by the number of whole sections of twenty miles each, extending from the point of construction then reached to the Missouri River.

SEC. 5. It is further expressly provided that this act shall not be so construed as to give title to any portion of said lands to the company accepting the provisions hereof otherwise than as the work progresses and as provided in the act of Congress aforesaid conferring the lands upon the State of Iowa, namely: When they shall have completed each section of twenty miles of road aforesaid they shall be entitled to the amount of land apportioned thereto, and not before; and they shall not become entitled to the first one hundred and twenty sections authorized by act of Congress until such first section of their road shall have been completed, at which time they shall become entitled to the first apportionment of land. Nor shall this act be so construed as in any manner to prevent the general assembly of this State from resuming, upon failure of either of the conditions named in the second section of this

act, all lands to which the said company shall not have then become entitled by completion of one or more sections as aforesaid of the said road.

SEC. 6. And it is further expressly provided that said company shall build, or cause to be built, before the first day of January, 1861, a railroad of like *guage* and equal in quality to the Chicago, Iowa and Nebraska Railroad, from Pearl street, in Lyons City, to a point of intersection with the said Chicago, Iowa and Nebraska Railroad within the corporate limits of Clinton City, with such switches and side-tracks as the business of the said town of Lyons may require; and to operate, or cause to be operated, the same by running passenger and freight cars of the same class with those used by the Chicago, Iowa and Nebraska Railroad, in close connection forever with all regular trains at any time run on said Chicago, Iowa and Nebraska Railroad, without occasioning any unnecessary delay to freight or passengers at said point of intersection; and the charge per mile for transportation of freight or passengers shall never exceed the regular charges for like service on the Chi-
42 cago, Iowa and Nebraska Railroad; the intent and meaning of this section being to secure to the citizens of Lyons the same privileges and benefits of a railroad connection that are enjoyed by any other place on said Chicago, Iowa and Nebraska Railroad; and it is hereby expressly provided that no lands shall be certified by the governor to said Cedar Rapids and Missouri River Railroad Company until they have complied with all the requirements of this section.

SEC. 7. Said company shall not commence to build or construct said road at any point further west from the Mississippi River than the town of Marion, in Linn County, Iowa, and the governor of the State shall not certify any of the lands herein transferred to said company until that portion of the road between said town of Marion and the city of Cedar Rapids, together with so much more of said road as to make, in the aggregate, at least twenty miles, shall be completed, equipped, and operated by said company or its successors.

SEC. 8. And be it further enacted that it shall be deemed a felony for the president and directors or managers of the said railroad company accepting the grant of land to be conveyed by this act to wilfully misapply any of the land herein granted to any other purpose than the carrying into effect the true meaning and intent of this act, and the president, directors, or managers of said railroad company who may be guilty of any such wilful' misapplication of the lands herein granted shall be liable to a fine of not less than five thousand dollars, or imprisonment in the county jail not less than twelve months and not more than three years, or both such fine and imprisonment, at the discretion of the court before whom any case may be tried.

SEC. 9. It is further expressly provided that, if said Cedar Rapids and Missouri River Railroad Company shall fail or refuse to accept of this grant upon the conditions hereby imposed, and in time and manner as aforesaid, the census board of this State is hereby authorized, by proper writing, with the seal of State affixed thereto, to confer the same upon such party or company as shall, in their judgment, be competent to carry out the enterprise hereinbefore provided for in good faith, and which shall accept the grant by a proper written instrument duly executed and attested, and shall file the same in the office of secretrry of this State, subject to all the preceding sections of this
43 act, and the same shall, in that case, be applicable to such grantee, subject to all the foregoing terms and conditions of this act as fully as if named and originated herein.

SEC. 10. This act shall take effect and be in force from and after its publication in the Iowa State Register and in the Iowa State Journal.
Approved March 26th, 1860.

I hereby certify that the foregoing act was published in the Iowa State Journal April 7th, 1860, and in the Iowa State Register April 11th, 1860.

ELIJAH SELLS,
Secretary of State.

EXHIBIT M.

(Laws of Iowa, 1866, p. 71.)

An act providing for the adjustment of certain land claims with the General Government.

Whereas the excess of land certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4th, 1841, known as the 500,000-acre grant, has not been reconveyed, nor satisfaction rendered to the General Government; and

Whereas the lands falling to the State under the joint resolution of Congress of March 3d, 1861, entitled "Joint resolution to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land claim in the State of Iowa, and for other purposes," approved July 12th, 1862, have not yet been certified or approved to the State; and

Whereas the claims of the State against the United States, arising under swamp-land grant, remain, to a very great extent, in an unsettled and unsatisfactory condition; and

Whereas the interest of the State and her grantees demand a speedy settlement of all said matters; therefore,

44 SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That Josiah A. Harvey, register of the state land-office, be, and he is hereby, appointed a commissioner on behalf of the State of Iowa, to adjust with the General Government all the matters and claims aforesaid.

SEC. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interest of the State, and he is hereby authorized to adjust the said excess of the 500,000-acre grant, by permitting the United States to retain out of the indemnity land falling to the State under said act of Congress of July 12th, 1862, an amount equivalent to such excess. *Provided*, That nothing herein contained shall be construed to be a relinquishment of the claim of the State under the said 500,000-acre grant to the 12,813 51-100 acres selected as a part of such grant, and subsequently rejected from a supposed conflict with the act of Congress approved August 8th, 1846, known as the Des Moines River grant, and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000-acre grant, and a confirmation of the title of the State thereto, as a part of such grant.

SEC. 3. As soon as the claim or claims, or matters of difference, under any one of said acts, shall be adjusted, said commissioner shall report the same to the census board, setting forth the terms and mode of

adjustment, and said board shall examine and pass upon said adjustment, so presented, and the approval of a majority of said board shall make the settlement of said matters or claims final and binding upon the State of Iowa. Such approval shall be in writing signed by the members of said board agreeing thereto, and attested by the great seal of the State of Iowa.

SEC. 4. Said commissioner shall receive as his compensation two dollars per day for the time actually engaged in the discharge of the duties by this act imposed, with his necessary expenses in attending to the same, and his account for such time and expenses made out from time to time, or at the conclusion of his services as such commissioner, and sworn to by him, shall be presented to the census board for allowance, and if approved and allowed by them, the auditor of state shall
45 draw his warrant on the State treasurer, who shall pay the same out of the general revenue of the State.

SEC. 5. The amount of expenses incurred and paid out of the treasury, as provided in the preceding section, in carrying out the provision or this act, shall be approved by the census board, as nearly as practicable, pro rata, among the parties receiving or entitled to receive the benefits resulting from the adjustment of said several matters with the General Government, and the amount thus apportioned shall be paid into the State treasury by such parties respectively before they shall be entitled to receive the proceeds or benefits of such settlement.

SEC. 6. All indemnity scrip received from the General Government, and all swamp lands patented to the State shall be conveyed to the counties to which they belong, and all money and indemnity scrip received from the Government shall be placed under the control of the board of supervisors of the several counties to which they belong, leaving the counties thereof through their respective boards of supervisors to settle with their grantees.

SEC. 7. This act being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register and the Iowa Homestead, newspapers published at Des Moines.

Approved March 30th, 1866.

I hereby certify that the foregoing act was published in the Iowa State Register April 13th, 1866, and in the Iowa Homestead.

JAMES WRIGHT,
Secretary of State.

46 And on this day, to wit, the 21st day of October, in the October term, A. D. 1870, in the records of the proceedings thereof, in said entitled cause appears the following entry, to wit:

THE CEDAR RAPIDS AND MISSOURI RIVER Railroad Company
vs.
JOHN H. MARTINDALE ET AL. } No 171. Ch'y.

Now, to wit, October 20, 1870, leave granted complainants to make parties defendant all persons who have commenced suits at law in this court since the last term thereof, involving the same questions as the actions of defendants herein; and that a temporary writ of injunction issue upon filing a bond by complainants, to be approved by the clerk, in the penal sum of five thousand dollars, conditioned as required by

the rules of this court, enjoining and restraining the defendants and each of them, from proceeding further with the several actions
47 at law and in equity, until the further order of this court. It is further ordered that defendants have until December rule day, to answer, plead, or demur, and leave also to move to dissolve the injunction at the next term of this court.

48 And on the same day, to wit, the 21st day of October, the said complainants by their solicitors, filed in said cause, by leave of court their amendment to petition, which is in the following words and figures, to wit:

U. S. circuit court, district of Iowa.

CEDAR RAPIDS AND MISSOURI RIVER RAILroad Company et al., comp't's, *vs.* JOHN MARTINDALE ET AL., DEF'TS.	Oct. term, 1870. No. 171. Chancery.

To the judges of the United States circuit court for the district of Iowa:

The complainants, by leave of the court first had and obtained, make the plaintiffs in the following actions at law, parties defendants herein, namely: John Stryker v. Bennett; same vs. Lucas; Martindale vs. Munsell.

ISAAC COOK & N. M. HUBBARD,
Sol. for Compl'ts.

(Endorsed:) Filed Oct. 21, 1870.
GEORGE B. CORKHILL, *Clerk.*

49 And on this day, to wit, the 21st day of October, A. D. 1870, came the said complainants by their solicitors, and filed in said office their injunction bond; which is in words and figures following, to wit:

Know all men by these presents that we, Cedar Rapids and Missouri River Railroad Company, William Enfield, Perry Scott, Louis Bollee, Hiram Lucas, Enos Bennett, and J. F. Alexander, as principals; and John Weare, John T. Ely, and George Douglass, as sureties, are held and firmly bound unto Des Moines Navigation and Railroad Company, Roswell L. Burrows, John H. Martindale, and John Stryker, in the penal sum of five thousand dollars, for the payment of which well and truly to be made we bind ourselves and our successors, our heirs, executors, and personal representatives, jointly and severally. Witness our hands this 23d day of May, 1870.

50 Whereas the above-bounden. the Cedar Rapids and Missouri River Railroad Company, Louis Bolee, Wm. Enfield, Hiram Lucas, Enos Bennett, Perry Scott, and J. F. Alexander have filed their bill in equity praying an injunction against the above-named obligees in the circuit court of the United States, for the district of Iowa, and the said court has ordered the allowance and issuance of said writ:

Now, if the said obligors shall pay all damages which may be adjudged against the plaintiffs in said bill by reason of said injunction, and also pay any and all judgments that may ultimately be recorded against any or all of the plaintiffs herein, (who are defendants in the suits named in plaintiffs' bill in equity above named,) for any or all the

causes of action on which the several suits here sought to be enjoined are founded, then this bond to be void; else of full force.

THE CEDAR RAPIDS & MISSOUR' RIVER RAILROAD,
LOUIS BOLLE,
WILLIAM ENFIELD,
LOUIS BOLLE,
51 HIRAM LUCAS,
ENOS BENNETT,
PERRY SCOTT,
J. F. ALEXANDER,
Principals,
By their attorney, ISAAC COOK.

JOHN WEARE,
JNO. F. ELY,
GEO. DOUGLAS,
Sureties.

STATE OF IOWA, *Linn County, ss.*

I, John Weare, John F. Ely, & George Douglass, being duly sworn, on oath, say that I am a freeholder of the State of Iowa and a resident thereof; that I have property within this State, subject to execution, to an amount equal to the sum of ten thousand dollars, and that I am worth ten thousand dollars over and above all liabilities and debts.

JOHN WEARE.
JNO. F. ELY.
GEO. DOUGLAS.

Subscribed and sworn to before me by the said John Weare, John F. Ely, and Geo. Douglas, at my office, in said county of Linn, on this 23rd day of May, A. D. 1870.

Witness my hand and seal notarial, hereunto set and affixed, at my said office, on the day and year aforesaid.

[SEAL.] JOHN F. DEAN,
Notary Public.

(Endorsed:) Filed Oct. 21, 1870.
GEORGE B. CORKHILL, *Clerk.*

52 And on this day, to wit, the 5th day of December, came the said defendants by Withrow & Wright, and filed in said clerk's office their demurrer to said bill; which is in words and figures following:

Demurrer to bill.

In the circuit court of the United States, district of Iowa.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD Company
ag't
JOHN H. MARTINDALE.

The defendants, John H. Martindale, Roswell L. Burrows, John Stryker, and the Des Moines Navigation and Railroad Company, by protestation, not confessing or acknowledging all or any of the matter in said complainants' bill to be true, in such manner and form as therein alleged

and set forth, do demur thereto, and for cause of such demurrer showeth—

1. That the said complainant has not, by its said bill, made or
53 stated such a cause as doth or ought to entitle it to any such, *or* relief as is thereby sought and prayed as against these defendants.

2. That said bill is multifarious in this—that it joins together distinct matters which do not depend upon each other.

Wherefore these defendants pray judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained; and pray to be hence discharged with their reasonable costs in this behalf sustained.

WITHROW & WRIGHT,
Sol. for Pl'ff.

I, Thomas F. Withrow, being duly sworn, do depose and say that I am one of the solicitors for defendants in the above-entitled cause, and that I verily believe said demurrer is not taken for the purpose of delay, but that justice may be done.

THO. F. WITHROW.

Subscribed by said Withrow in my presence, and by him sworn to before me Dec. 2nd, 1870.

[SEAL.]

W. O. CURTISS,
Notary Public, Polk Co., Ia.

54 We, Withrow & Wright, of solicitors for defendants, hereby certify that we believe the foregoing demurrer is well taken in point of law.

WITHROW & WRIGHT.

(Endorsed:) Filed Dec, 5, 1870.
GEORGE B. CORKHILL, *Clerk.*

55 And on this day, Jan'y 18, 1871, comes the parties by their attorneys and file in said cause their stipulation, of which the following is a copy:

In the circuit court of the United States, district of Iowa.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILroad Company et al.
vs.
JOHN H. MARTINDALE ET AL.

It is stipulated between the parties—

1. The defendants shall file and answer at February rule-day, and plaintiff reply at March rule-day.
2. All the evidence filed in the case of Baker vs. Williams may be read in evidence on the trial of this cause.
3. Either party may take additional evidence until the first day of the May term.
4. The cause shall come on for final hearing at the May term, 1871.

56 ISAAC COOK, *Att'y. for Comp'ts.*
WITHROW & WRIGHT, *for Def'ts.*

(Endorsed:) Filed Jan'y 18, 1871. George B. Corkhill, clerk.

57 And on this day, to wit, the 6th day of March, A. D. 1871, came the defendants, John H. Martindale, Roswell L. Burrows, John Stryker, and the Des Moines Navigation and Railroad Company by their solicitors and file in said cause their answer to the said bill of complaint which is in words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER RAILroad Company et al.
vs.
JOHN H. MARTINDALE ET AL.

The joint and several answer of John H. Martindale, Roswell S. Burrows, John Stryker, and Des Moines Navigation and Railroad Company.

58 These defendants respectively, now and at all times hereafter reserving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, saith:

That they admit that there has been commenced and is now pending on the law side of this court the several actions in said petition described, that the several defendants in said actions and suits claim the said parcels of land, which respectively constitute the subjects of said actions, under conveyances made by the plaintiff, the Cedar Rapids and Missouri River Railroad Company; that the plaintiffs in said action
59 have derived their respective titles from the Des Moines Navigation and Railroad Company.

That these defendants deny that the conveyance of the defendants, the Cedar Rapids and Missouri River Railroad Company to its co-defendants, of the several parcels of real estate in controversy herein, conveyed to them, or any or either of them, any title to said premises, or any part thereof; that said plaintiffs have made valuable improvements on said premises; that the premises in controversy, or any part thereof, were by the act of Congress approved May 15th, 1856, "making a grant of lands in the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," granted to said State; that the said lands were subsequently, by acts of Congress relating to the same subject granted to said State; that the legislature of the State of
60 Iowa, approved March 26th, 1860, or by any other act ever granted said lands or any part to said defendant, the Cedar Rapids and Missouri River Railroad Company, for the purpose maintained in said bill or for any other purpose; that the Des Moines Navigation and Railroad Company fraudulently or collusively with the plaintiffs therein caused two suits to be commenced and prosecuted against the plaintiff and itself in the circuit court of the United States for the southern district of New York, or any other place, in the year 1864, or at any other time—the one by Calvin Burr, and the other by Samuel G. Walcott; and these defendants expressly deny each and every allegation in said bill contained, charging or tending to show that these defendants or either was guilty of any fraud in the institution or management
61 of said suits; and they deny that any material fact was by either of these defendants suppressed in said case.

The defendants having specifically answered the allegations of the plaintiff's bill, for further answer thereto, say:

That, on the 8th day of August, A. D. 1846, the Congress of the United States passed an act entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory;" which act was, on said day, approved, and a copy thereof is affixed as Exhibit to the plaintiff's bill; that there was, by said act, granted to the then Territory of Iowa, one equal moiety in alternate sections of the public lands remaining unsold and not otherwise disposed of, incumbered, or appropriated, in a strip five miles in width on each side of said river; that subse-
62 quently, in the construction of said grant by the executive officer of the Federal Government having charge of the execution of the laws relating to public lands, it was held to extend from the mouth of the Des Moines River to the northern boundary of the State; that in accordance with said construction all public lands of the United States in alternate sections within five miles of the Des Moines River, between its mouth and the northern boundary of the State, then surveyed and remaining unsold, and not otherwise disposed of, incumbered, or appropriated, were reserved from sale as public lands and appropriated to the purposes of said grant; that all of said lands surveyed were certified to said State as a part of said grant; that in the lands so reserved and certified were the lands embraced in the several actions de-
63 scribed in the bill, and defendants aver that all and singular of the lands in controversy were so reserved for said work of internal improvement contemplated by said act of Aug. 8th, 1846, by competent authority, prior to the said grant of May 15th, 1856, under and by virtue of which said complainant claims title.

Defendant shows that by virtue of a proviso contained in said act of Congress approved July 15th, 1856, it expressly provided "that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any objects of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved from the operation of said act; that at the time of the taking effect of said act of Congress, and long before that time, the proper officer of the
64 United States had reserved and set apart the lands in controversy, as lands enuring to the State of Iowa under the said grant of August 8th, 1846, for the improvement of the navigation of the Des Moines River, and had certified the same to the State of Iowa as a part thereof.

Defendants further show that, in consideration that said lands belonged to the State of Iowa in trust for the improvement of said river, the Demoine Navigation and Railroad Company, a body corporate, duly organized under the laws of the State of Iowa, made and entered into a contract with the State of Iowa, on the day of , 1853, a copy of which contract is marked Exhibit , and made a part of this answer; that, at the time of the execution of said contract, the State of Iowa, by its officers and agents, had adopted a plan for the improvement of the Des Moines River by means of slack-water naviga-
65 tion, and the building of locks and dams on said river; that, by virtue of said contract, said work of improvement still continued under the supervision of the said State of Iowa, its commissioners and engineers, and the said De' Moine' Navigation & R. R. Company had no other control thereof except to cause certain work to be done under the supervision and direction of the engineers so employed and chosen by

the State of Iowa; that, as will more fully appear by said contract, the said Des Moines Navigation & R. R. Company were to receive in pay for the moneys so expended, as aforesaid, in erecting and building said locks and dams, at the specific prices for wood, stone, timber, iron, and excavation, as shown by said contract, the lands so granted by Congress and then and thereafter belonging to the State for that purpose, at the rate of an acre of land for every $1 25 so paid out and expended, as aforesaid, as the same should be estimated by the engineer
66 appointed by the State of Iowa.

Defendants show that the said De' Moine' Navigation & R. R. Company expended on said work of improvement the sum of $332,634 04 and that the same was so estimated and certified by the proper engineer as provided in said contract and the governor of the State of Iowa, on the 28th day of April, 1858, certified to the President of the United States the fact of said expenditure by said De' Moine' Navigation and R. R. Company, and the further fact that in pursuance of the contract aforesaid, the said De' Moine' Navigation and R. R. Company had become and were entitled to receive of the lands of said grant 266,107$\frac{23}{100}$ acres, certified and approved by the State as aforesaid.

Defendants aver that the State of Iowa, by joint resolution of the general assembly of said State approved March 22nd, 1858, and which is made a part of this answer, proposed a settlement with The De'
67 Moine' Navigation & R. R. Company of the amount of lands due said company under their said contract, and agreed in consideration of the su'nder of the right of said company under said agreement, and the sum of twenty thousand dollars, to deed, and convey, and secure to said company all the lands that at that date had been certified to the State as enu'ing to the State under the act of August 18, 1846, aforesaid.

Defendants aver that said proposition of settlement was accepted by The De' Moine' Navigation & R. R. Company, and that said company paid the said $20,000 and released the property to the State, as provided in said joint resolution, and, in consideration thereof and the indebtedness of the State to said company under the contract, the governor of the State of Iowa in pursuance of law, executed conveyances of said lands, including the lands in controversy in this suit, to the
68 said De' Moine' Navigation & R. R. Company, and the said company, for a valuable consideration, sold and conveyed the same to the several defendants herein.

Defendants aver that the said Navigation & R. R. Company and these several defendants were bona-fide purchasers of said land, for a valuable consideration, from the State of Iowa, at the date of said joint resolution approved March 2nd 1861, and for a long time before that date, and had deeds of conveyance as aforesaid from the State of Iowa since 1858, made in pursuance of said joint resolution of the general assembly approved March 22nd, 1858.

Defendants further show and aver that, in consideration that the Supreme Court of the United States in the year 1859 decided that, by the terms of the grant of August 18th, 1846, aforesaid, the alternate sections of land so certified to the State, above the Rac'oon Fork of the Des Moines River, had been improperly certified under said grant, the
69 Congress of the United States, by joint resolution approved March 2, 1861, granted and relinquished to the State of Iowa all and singular the lands so certified improperly, as aforesaid, that had been certified to the State of Iowa as part of the land enuring to the State under the grant of August 8th, 1856, and which had been sold

by the State and were then held by bona-fide purchasers. And afterwards, to wit, on the 12th day of July, 1862, the Congress of the United States extended said grant of August 8th, 1846, so as to embrace all the lands in alternate sections on each side of the Des Moines River and within five miles thereof, and within the boundaries of the State of Iowa.

Defendants aver that, upon the passage of the joint resolution by Congress, approved March 2nd, 1861, at the request of the Commissioner of the General Land Office of the United States, requesting
70 the governor of the State of Iowa to furnish to the proper authorities of the United States a list of the lands sold by the State and held by bona-fide purchasers, of the lands so certified above the Rac'oon Fork of the Des Moines River, under the grant of August 8th, 1846, the register of the State land-office of the State of Iowa and the governor of said State, under the date of July 22, 1862, certified that all the lands so deeded as aforesaid to the Des Moines Navigation & R. R. Company, and including the lands in controversy, had been sold by the State of Iowa and were so held by bona-fide purchasers, and that said certificate embraced the lands here in controversy.

And these defendants severally submit to this honorable court, that all and every of the matters in said bill mentioned and complained of are matters which may be tried and determined at law, and with respect
71 to which the said plaintiff is not entitled to any relief from a court of equity, and these defendants hope they shall have the same benefits of this defense as if they had demurred to the bill.

And these defendants severally deny all and all manner of unlawful combination and confederacy wherewith they, or either of them, are by said bill charged, without this, that there is any other matter contained material and necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, & avoided, or denied, is true, to the knowledge or belief of this defendant, and all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WITHROW & WRIGHT,
NOURSE & KAUFFMAN,
Def'ts' Solicitors.

72 (Indorsed:) The Cedar Rapids & Missouri River R. R. Co. vs. John D. Martindale et al. Answer of def'ts Martindale, Burrows, Stryker, & De' Moine' Nav. Co. Filed March 6th, 1871. George B. Corkhill, clerk. Withrow & Wright, Nourse & Kauffman.

73 And on this day, to wit, the 1st day of April, A. D. 1871, came comp'ts' solicitors, and filed in said cause a general replication to defendants' answer, which said replication is in words and figures following, to wit:

THE CEDAR RAPIDS AND MISSOURI RIVER RAILroad and others, compl'ts,
against
JOHN H. MARTINDALE AND OTHERS, DEFENDants. } In equity.

The replication of the said complainant to the answer of the said defendants.

These repliants, saving and reserving to themselves all manner of ex-

ception to the manifold errors and insufficiencies in the said answer, for replication thereto, say—

That they will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insuffi-
74 cient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

N. M. HUBBARD,
ISAAC COOK,
Sol's for Comp'ts.

(Endorsed:) Filed April 1, A. D. 1871.
GEORGE B. CORKHILL, *Clerk.*

75 And on this day, to wit, the 31st day of May, in the May term, A. D. 1871, of said court, in the records of the proceedings thereof in said entitled-cause appears the following entry, to wit:

THE CEDAR RAPIDS AND MISSOURI RIVER RAILroad Co. et al.
vs.
JOHN H. MARTINDALE ET AL. } No. 171. Equity.

This cause coming on for a hearing, the complainant appears by Isaac Cook and N. M. Hubbard, and the defendants by Withrow & Wright, and the cause was heard upon the pleadings and proofs, and the court having heard the argument of counsel, and being fully advised in the matter, orders that the bill of complainants be dismissed, and that the complainants pay the costs of this proceeding, taxed at $, and that execution issue therefor. And thereupon complainants pray an appeal, which is allowed, on filing bond, with approved security, in the penal sum of one thousand dollars, conditioned as the law directs.

And said bond is thereupon filed and approved.

76 And on this day, to wit, the 14th day of June, A. D. 1871, came the complainants, by their solicitors, and filed in said cause their supersedeas bond which is in words and figures following, to wit:

Supreme Court of the United States.

CEDAR RAPIDS AND MISSOURI RIVER RAILroad and others
against
JOHN H. MARTINDALE AND OTHERS. } In chancery.

Know all men by these presents that we, Cedar Rapids and Missouri River Railroad as principal, and J. I. Blair, John Weare, and W. W. Walker, as sureties, are held and firmly bound unto John H. Martindale, Roswell S. Burrows, John Stryker, and the Des Moines Navigation and Railroad Company, in the sum of one thousand dollars, to be

paid to the said John H. Martindale, Roswell S. Burrows, John Stryker, and the Des Moines Navigation & Railroad Company, their exe-
77 cutors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents, sealed with our seals, and dated at Cedar Rapids, Iowa, this 13th day of June, A. D. 1871.

Whereas the above-named Cedar Rapids and Missouri River Railroad and others have prayed and been allowed an appeal to the Supreme Court of the United States to reverse the decree and judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Iowa:

Now, therefore, the condition of this obligation is such that, if the above-named Cedar Rapids and Missouri River Railroad and others shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their bill, then this obligation
78 shall be void; otherwise, the same shall be and remain in full force and virtue.

THE CEDAR RAPIDS & MO. R'R'D COMP.,
P'r J. I. BLAIR, *Pres't.*
JOHN WEARE.
W. W. WALKER.

Sealed and delivered in the presence of—
N. M. HUBBARD.

(Endorsed:) Approved and filed this 14th day of June, A. D. 1871.
GEORGE B. CORKHILL, *Clerk.*

79 And on this day, the 18th day of October, 1871, came the said parties, by their solicitors, and filed in said clerk's office their stipulation; which is in words and figures following, to wit:

THE CEDAR RAPIDS AND MISSOURI RIVER Railroad Company, Louis Bollee, William Enfield, Hiram Lucas, Enos Bennett, Lafayette Munsell, and J. F. Alexander, comp'ts,	In equity.
vs.	
JOHN H. MARTINDALE, ROSWELL S. BURROWS, John Stryker, & The Des Moines Navigation and Railroad Company, def'ts.	

Whereas in the cause above entitled, in which a final decree was rendered by the United States circuit court for the district of Iowa, at the May term thereof, A. D. 1871, in favor of the said defendants
80 and dismissing the complainants' bill, and from which final decree the complainants have appealed to the Supreme Court of the United States, the questions of title are the same as in the case of Jesse C. Williams vs. William Baker, now pending in the said Supreme Court, on appeal from the same circuit court;

And whereas both cases were tried in the said circuit court upon the same testimony, which testimony is now printed in the record of the said cause of Williams vs. Baker, in the Supreme Court, and the undersigned are of counsel in both causes:

It is therefore agreed that the cause first above entitled shall be heard on said appeal at the same time as the said cause of Williams against

Baker, and upon the same testimony contained in the printed record in that case, and, if the rules of the Supreme Court shall be found to require it, the evidence as now printed in the case of Williams vs. Baker shall be printed as a part of the record in this case.

Dated October 18, 1871.

81 The arguments of Honorable Platt Smith, Trumbull, & Cook, are to be taken as a part of the testimony in this case, and be submitted to the Supreme Court as such.

WITHROW & WRIGHT,
For Def'ts.

ISAAC COOK,
Att'y for Comp'ts.

(Endorsed:) Filed October 18, 1871.
GEORGE B. CORKHILL, *Clerk.*

82 The defendants offer and read in evidence on the hearing the following, to wit:

United States Supreme Court, December term, 1866.

SAMUEL G. WOLCOTT
vs.
DES MOINES NAVIGATION AND RAILROAD CO. } No. 204.

Argument in behalf of the Mississippi and Missouri Railroad Company, who have been permitted to intervene in this case.

The main question to be decided in this case is whether the lands in controversy were granted by the act of May 15th, 1856, making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State. (11 Statutes, 9.)

The first section of the act is as follows:

"That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burling-
83 ton, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads. But, in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof granted as aforesaid or
84 that the right of pre-emption has *has* attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have

attached, as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads:

85 *Provided further*, That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

Section 3d declares that "the lands hereby granted to the

86 State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no others."

Section 4th declares the manner in which the lands granted shall be disposed of by the State; "and if any of said roads are not completed within ten years no further sale shall be made, and the lands unsold shall revert to the United States."

The lands in dispute lie within the six-mile limit of one of the roads specified in the act of Congress, and are embraced within it, unless the United States, before the lines of the road were definitely fixed, had "sold" the same, or the "right of pre-emption had attached thereto, or they had been reserved to the United States by act of Congress or in some other manner by competent authority."

It is not pretended that the United States have ever sold the lands in controversy, or that any right of pre-emption has attached thereto.

Had they, at the date of the act—May 15, 1856—been reserved

87 to the United States by any act of Congress, or in any manner by competent authority, for any purpose whatever?

The record does not contain the slightest evidence of any such reservation, except the order of the Commissioner of the General Land Office of May 10, 1856, the object of which was to protect from sale the lands granted by the *the* act of May 15, 1856, the bill for which, having passed both Houses, was then awaiting the signature of the President. And if this reservation of all the lands in the several land districts through which any of the contemplated roads might pass, made for the purpose of protecting the lands for the benefit of the grant, is to be construed as taking them out of its operation, the act would be nugatory. No court could give a construction to an act done in aid of a grant which would destroy it.

So far from the lands in question having been reserved so as to take them out of the operation of the act of May 15, 1856, the record shows that, prior to that term, they had been certified to the State of

88 Iowa as embraced in the grant of lands of August 8th, 1846, to aid in the improvement of the navigation of Des Moines River, and that the State or its grantees were, at that time, in possession,

claiming and exercising acts of ownership over the lands in question. (Record, 26.)

The authorities of Iowa, the officers of the Des Moines Navigation and Railroad Company, and of the Interior Department, at the date of the act of May 15, 1856, all supposed the lands in controversy had been granted to the State of Iowa by the act of August 8th, 1846. Nobody, at that time, supposed them reserved to the United States for any purpose. It subsequently turned out (Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard) that these lands were not embraced in the act of August 8, 1846; and now an attempt is made to construe the mistaken action of the Land Department in certifying these lands as embraced in the grant of August 8, 1846, into a reservation of the lands to the United States.

To give such an effect to the action would be contrary to the understanding of everybody at that time. If these lands were reserved
89 or appropriated for any purpose at the date of the act of May 15, 1856, for what purpose was it? The record fails to show any such reservation to the United States for any purpose.

The lands in question, at that time, either belonged to the United States or to the State of Iowa, under the grant of August 8, 1846.

This court has decided they did not pass under that act; consequently, they were subject to the act of May 15, 1856, and passed by it to the State of Iowa, and having been once granted, that they were not subject to be again granted or effected by the joint resolution of March 2, 1861, or the act of July 12, 1862, is a proposition too plain to admit of argument.

It is insisted that the lands in controversy were not granted to the State of Iowa by the act of May 15, 1856.

The act contains words of present grant, in the 3d section makes the lands granted subject to the disposal of the legislature, and in the
90 4th section declares that, in a certain event, at the end of ten years, "the lands unsold shall revert to the United States." How could lands revert to a grantor who had never parted with them? The terms of the act are too positive, and the decisions of this court upon similar grants too frequent and too decisive to question that the title to the lands embraced within the limits passed by the act and the definite fixing of the lines of the roads, and the acceptance of the lands by Iowa, all of which the record shows to have been done, gave precision to the title, and attached to it the lands granted.

The Commissioner of the General Land Office, in his instructions to land officers, dated June 19th, 1856, says: "When the lands or routes of said roads are definitely fixed, then, and not till then, will the right of the State attach under the said act to all vacant lands in the
91 odd-numbered sections within the six-mile limit;" and the Secretary of the Interior, in his instructions to the Commissioner of the General Land Office, dated April 10th, 1862, says: "It follows then that such of those lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8, 1846." (Printed record, 39.)

It is contended that the act of May 15, 1856, did not confer upon the State of Iowa any title to, or any beneficial interest in, any lands; that it simply conferred a mere naked power or trust for the benefit of the grantor, which was liable to be revoked at any time prior to the actual construction of the road, and which Congress did revoke by the joint resolution of 2nd March, 1861, and the act of 12th July, 1862, and the

case of Rice vs. R. R. Co., (1 Black Rep., 358, 378,) is cited as sustaining this proposition. The case cited fails to sustain this position.

92 The grant of land to Minnesota, which was construed in that case, differed from the one under consideration in an important particular.

By the 4th section of that act it was expressly provided that no title shall vest in said Territory of Minnesota, nor shall any patent issue for any part of the lands mentioned until a continuous length of 20 miles shall be completed through said lands, and the decision of the court upon this point, turns upon the force of this provision.

The act of May 15, 1856, instead of fixing the time when the title to the granted lands shall vest in the State of Iowa, after the completion of twenty miles of said road, expressly provides that the State may sell the lands on each side of the R. R. as fast as twenty miles of said road shall be completed; and, at the expiration of ten years, the lands unsold shall revert to the United States. If the point made be

93 a good one, the title of the lands would never have been divested from the United States. The act construed in the case cited and the act of May 15, 1856, are so different in their provisions as to lead to the certain conclusion that the intention of Congress, in passing the act, was to give it a different effect from that which had been given by this court to the former act.

The provision in the fourth section of the act of May 15, 1856, that, in a certain contingency, "the lands unsold," at the expiration of ten years, "shall revert to the United States," is a direct recognition that during the ten years the United States gave up its control of the lands, and consequently, during that period, could not otherwise dispose of them by any subsequent act or joint resolution.

As to the second point made by Mr. Litchfield we say:

The record does not show, as alleged by defendant's counsel, that other lands were selected by agents of the State of Iowa, in lieu

94 of those in controversy. The act of May 15, 1856, gave no authority to appoint agents to make such selections in case of lands appropriated, only when the United States had "sold any sections or parts thereof granted as aforesaid," or when "the right of pre-emption had attached to the same;" and the Commissioner of the General Land Office, in his certificate, (record, 52; printed record, 40,) says these selections were in lieu of lands "which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State inured under said grant."

It is not pretended that the United States ever "sold," or that "the rights of pre-emption ever attached" to the lands in controversy. Hence no other lands could be selected in lieu of them, or if there were the act would be nugatory, and the State would acquire no title by the selection, and consequently would not be estopped by such

95 an idle proceeding from claiming the lands granted by the act of May 15, 1856.

If Congress granted to the State of Iowa, by the act of May 15th, 1856, either a present title to these lands or an inchoate interest, which did afterwards, by the location of the railroad, ripen into a title, then these lands are not affected by the subsequent legislation of 1861 and 1862. That the act of May 15, 1856, did convey to the State of Iowa an interest in said lands which might ripen into a perfect title for the purposes indicated in the act it seems impossible to deny. If this is so,

what title passed by the resolution of 1861 and the act of 1862? Only the title retained by the Government at the time of the passage thereof. Even if Congress had the right to revoke the grant made to the State by the act of May 15, 1856, before it was executed, yet, after the expiration of 5 or 6 years from the location of the railroad, and long
96 after the State had granted the same land to the railroad, no such revocation could be made.

It was certainly not attempted to be made by the resolution of 1861, for that only purported to convey the title yet retained by the United States.

The location of the road was perfected on the 30th Sept., 1856. (Record, p. 48 to p. 44.)

The act of Congress and the location of the road, which was a designation of the lands granted, did vest the title to the land in the State of Iowa, and no implied revocation in 1861 or 1862 could affect that title; to hold otherwise would be to say that the roads which were built upon the faith of that grant might lose their right to the lands by act of Congress after the roads had been built and the expenditure necessary for that purpose had been made. It is clear, as we believe, that the United States were the owners of the lands in May, 1856, and that the same were granted to the State of Iowa by
97 the act of that date, and that such interest had vested in the different railroads prior to 1861, as could not be divested by the resolution of 1861 or the act of 1862.

The Mississippi and Missouri Railroad Company is largely interested in this question. The title of said company to each alternate section of land through a strip six sections in width on each side of said road and ten miles in length, will be affected by the decision.

This suit is one brought by a stockholder of the Des Moines Navigation Company against the company itself. The issue seems to have been joined by consent in the State of New York, and in the case the plaintiff says it is indifferent to him how the decision is made. We think it is fair to infer that this suit has been brought by parties who agree in interest and purpose to unsettle the title to the very large amount
98 of lands which has been applied to aid in the construction of the various railroads in Iowa. We are left in utter ignorance of the pendency of the suit until it is submitted on briefs to this court. During the few days given to investigate the questions arising in the record, amid the pressure of other duties, we have been unable to devote that attention to it which its importance demands, and we trust that the court will not limit its investigations merely to the points we have been able to suggest in defence of the interests we represent.

L. TRUMBULL,
B. C. COOK,
Counsel for M. & M. R. R. Co.

99 I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing manuscript pages, numbered from (1) one to (12) twelve inclusive, contain a true copy of the brief of L. Trumbull and B. C. Cook, counsel for the intervenors, filed in the said Supreme Court, in the case of Samuel G. Wolcott vs. The Des Moines Navigation and Railroad Company, No. 204, of December term, 1866, as the same remains upon the files of the said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the

seal of the said Supreme Court, at the city of Washington, this 8th day of September, A. D. 1870.

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

[Stamp.]

100 The defendants offered and read in evidence upon the hearing the following, to wit:

Supreme Court of the United States. December term, 1866.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
DES MOINES NAVIGATION AND RAILROAD Co., defendants in error. } No. 204.

Argument of Platt Smith, who intervenes in behalf of the Dubuque and Sioux City Railroad Company.

Both of these cases come up from the circuit court of the United States *from* the southern district of New York. They are both upon the same identical issues, and substantially upon the same state of facts. They are both suits brought against The Des Moines Navigation and Railroad Company to recover damages for an alleged failure of title to certain lands in Iowa conveyed by defendants below to the paintiffs below by warrantee deed. The plaintiffs below are citizens
101 of the State of New York, and the defendant below is a citizen of the State of Iowa.

The lands in dispute lie within five miles of the Des Moines River, and above the mouth of the Rac'oon Fork, and in the alternate odd-numbered sections; and they also lie within the six and fifteen mile limit of the Dubuque and Sioux City Railroad Company, and are included in the act of Congress granting lands to Iowa passed May 15, 1856.

The Des Moines Navigation and Railroad Company claim title to these lands under an act of Congress passed August 8th, 1846, granting lands to Iowa to aid in the improvement of the navigation of the Des Moines River, and under grants and deeds from the State of Iowa to said company, and also under a joint resolution of Congress passed March 2nd, 1861, and under an act of Congress passed July 12th, 1862.

102 The Dubuque and Sioux City Railroad Company claim title to the same lands under an act of Congress passed May 15, 1856, granting lands to Iowa to aid in the construction of certain railroads, and grants from the State of Iowa to the Dubuque and Pacific Railroad Company, and conveyances from said company to the Dubuque and Sioux City Railroad Company.

Three questions are raised by the records in these cases:

First. Did the act of Congress passed August 8th, 1846, grant the lands in dispute to the State (then Territory) of Iowa for the purposes specified in the act?

Second. Did the act of Congress of May 15, 1856, grant the lands in dispute to the State of Iowa for the purposes specified in said act, and did the act vest the title to said lands in dispute in the State of
103 Iowa, or were the lands in dispute reserved to the United States, so that the said act of May 15, 1856, did not operate to vest them in the State of Iowa?

Third. Did the joint resolution of Congress passed March 2nd, 1861, or the act of July 12th, 1862, pass the title to the lands in dispute to the State of Iowa, and, through said State, to the Des Moines Navigation and Railroad Company?

The first question was brought directly before this court in the case of the Dubuque and Pacific Railroad Company vs. Litchfield, and is reported in 23 Howard, 66. The court, in an elaborate opinion, held that the act of August 8th, 1846, did not grant to the State of Iowa any lands above the mouth of the Rac'oon Fork, and that the Des Moines Navigation and Railroad Company, under whom Litchfield claimed title, had no title to the lands in dispute.

That decision must be a finality, as far as the construction of that act is concerned; yet the said Des Moines Navigation and Railroad Company have been making continued attempts to overturn that de-
104 cision. The defendant Litchfield was the president of said company about the time of that decision. (See record, page 5, in the Samuel G. Walcott case, now on hearing.) The judgment entered in the circuit court of Iowa, upon the mandate of this court, was set aside, and it required the peremptory mandamus of this court to have that judgment stand as the judgment of said circuit court. (Dubuque & Pacific Railroad Co., ex parte, 1 Wallace, 69.)

A suit was then brought in the circuit court for Iowa by Calvin Burr against said Des Moines Navigation and Railroad Com., involving the title to a portion of the same lands as in the present suit, and the case submitted upon an agreed statement of the evidence. This case is recorded in 1st Wallace, 99. The Dubuque and Sioux City Railroad Company intervened in that case in this court, and the case was dismissed.

It is clearly for the interest of the plaintiffs below in these cases to have the defendant obtain judgment on the question of title, for then they would hold their lands under their deeds. It is also to the
105 interest of the defendant below to succeed; for if it can now succeed in procuring from this court an opinion that its title to the lands in dispute is valid, it will give it some one hundred thousand acres of land now held by the Dubuque and Sioux City Railroad Company. This very readily accounts for the reason that the defendant in the court below should voluntarily go to the State of New York and enter an appearance to suits there, where it might be out of the way of the interference of the Dubuque and Sioux City Railroad Company.

The records in these cases show that there is no real contest between the parties to the suit, but that the real litigant against both parties is the Dubuque and Sioux City Railroad Company. The other railroad companies interested in the lands granted in the act of May, 1856, which cross the Des Moines above the Ra'coon Fork, are also interested in the questions involved.

The second question can only be answered in the affirmative. The act itself vested the title to the lands therein described in the
106 State of Iowa. It' language is: "That there be, and is hereby, granted to the State of Iowa, for the purpose," &c. This is a present grant. The particular lands granted are made certain by the location of the line of the road, and all the estate of the United States passed by the act itself to the State of Iowa. We refer to a few of the authorities on this point, as it seems so well settled as to be beyond dispute: United States vs. Brockes, (10 Howard, 442;) Lassieur vs. Price, (12 Howard, 59;) Dubuque & Pacific Railroad Company vs. Litchfield, (23 Howard, 66.)

In this last case the court, speaking of the act of August 8, 1846,

where the granting clause is in the same language as the act of May 15, 1856, uses the following language:

"The act of Congress was a direct grant to Iowa, in fee, of the undivided moiety of the whole tract on each side of the river from the Ra'coon Fork to the Missouri line. Congress had the undoubted power to make the grant and vest the fee."

The record in the case of S. G. Wolcott, page 46, shows that said road was located on the 27th day of September, 1856, and the lands in dispute lie within the six-mile limit of the line of said road, and are the alternate odd-numbered sections. On the 14th day of July, 1856,
107 the general assembly of Iowa passed an act granting all the lands included in the act of May 15, 1856, to aid in the construction of a railroad from Dubuque to a point on the Missouri River, at or near Sioux City, to the Dubuque and Pacific Railroad Company. The granting part is in the following language: "Are hereby disposed of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company," &c. This is a grant in presenti, and vested the title to the lands in said company. Upon the location of the line of said road the title in the particular lands vested, and the United States had no remaining interest in them.

On the 9th day of July, 1867, said company conveyed the lands in dispute, by deed of trust, to certain parties to secure bonds to be issued for the construction of the road, and on the day of November, 1863, said Dubuque and Sioux City Railroad Company (which had become invested with the right and title of the Dubuque and Pacific Railroad Company in said lands) conveyed the same to George J. Forrest and others.

It is now claimed that the last proviso to the first section of the act of May 15, 1856, excepted the lands claimed by the Des Moines Navigation and Railroad Company from the operation of this grant. That proviso is as follows: "And provided further, That any and all
108 lands heretofore reserved to the United by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any objects of internal improvement or for any other purpose whatsoever, be, and the same are hereby, reserved from the operation of this act," &c. It is not claimed that any act of Congress has reserved the lands in dispute to the United States, unless the decision in the case of The Dubuque and Pacific Railroad Company vs. Litchfield (23 Howard) is erroneous and is to be overruled. But it is claimed that these lands were reserved to the United States by certain executive officers of the Government, and that the joint resolution of March 2nd, 1861, and the act of Congress of July 12th, 1862, vested these lands in the State of Iowa, and, through it, in said Des Moines Navigation and Railroad Company. The above proviso requires that the reservation be to some legal purpose and by competent authority. The only purpose claimed for such reservation was to aid in the improvement of the Des Moines River. But this court held, in the above case, in 23 Howard, that the lands in dispute were not reserved, and that no right in or to them passed by the act of August 8th, 1846; no reservation had been made by any competent authority. The evidence set out in the rec-
109 ord shows that prior to the act of May 15, 1856, the proper executive officers of the Land Department of the United States had construed the act of August 8th, 1846, as a grant extending above the mouth of Ra'coon Fork, and as including the lands in dispute; that the lands in dispute had been selected as within said grant, and that such

selections had been approved by the proper executive officers of the United States. If these officers had authority to make a reservation within the aforesaid proviso, and did make such reservation, then the Dubuque and Sioux City Railroad Company has never had any title to the said lands. The absolute power over, and right of disposition of, the public lands of the United States is in Congress. No such right exists in any of the officers of the Government, unless especially conferred for some particular purpose by act of Congress. The only authority conferred by act of Congress is the act of August 8th, 1846; and this court has held that no right of reservation was conferred upon such officers by that act.

In the case in 23 Howard, above quoted, the court says:

"No authority was conferred upon the executive officers administering the public lands to do more than make partition between the tenants in common—Iowa and the United States—in the manner pre-
110 scribed by Congress. The premises in dispute lie sixty miles beyond the limits of the trust granted. It was, therefore, impossible to make partition under this grant of lands lying outside of its boundaries, and all attempts to so so were merely nugatory."

These officers never claimed or professed to reserve these lands to the United States by any right in themselves to do so, but only for the purpose of carrying into effect the act of August 8th, 1846. These officers have power to offer for sale, and to suspend from sale, the public lands of the United States, as prescribed by law, but no authority is conferred upon them to reserve the public lands for any particular uses. On the 1st of June, 1849, the officers of the land-office at Iowa City were directed to withhold from sale the lands in dispute. (See record in the Wolcott case, page 12.) These executive officers withheld these lands from sale, not as a reservation, but temporarily, till the construction of the act could be judicially decided. (See same record, pages 14 and 15, 26 and 27.)

On the 10th day of May, 1856, just before the act of May 15, 1856, was passed, all the land officers in Iowa were directed to suspend from sale all the lands in the several land districts. If a simple withholding of lands from sale, or suspension of lands from sale, by the ex-
111 ecutive officers is a reservation to the use of the United States for a particular purpose, then the State of Iowa acquired no title to any lands in Iowa, or it acquired the title to all the lands in the said land-office districts, for all the lands were reserved from sale.

We therefore insist that no reservation of the lands in dispute had been made by competent authority, and that the title to the lands vested in *in* the State, and that no act of the executive officers, or even of Congress, could divest the State of Iowa of such title after the acceptance of the grant by the State.

Third. We further claim that, under the last question, no title to the lands in dispute passed to the State of Iowa under the joint resolution of 1861, or the act of Congress of July 12th, 1862, for the reason that the United States had no title to grant. It had already divested itself of the title by the act of May 15, 1856. No title could pass from the State of Iowa under the act of July, 1862, for the reason that a grant by
112 a State is not a warrantee, and a subsequently-acquired title does not inure to a grantee from a sovereign power. "Grants made by a legislature are not warrantees; and the rule universally applied in determining their effect is that if the thing granted was not in the grantor at the time of the grant no estate passed to the grantee." (Rice vs. Railroad Co., 1 Black, 374.)

All the questions involved in these cases seem to have been fully settled by the prior adjudication of this court; and we trust that the decision in these cases will end litigation in regard to the title to these lands.

PLATT SMITH,
For Interventors.

113 I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing manuscript pages, numbered from (1) one to (9) nine inclusive, contain a true copy of the brief of Platt Smith, counsel for the intervenors, filed in the said Supreme Court, in the case of Samuel G. Wolcott vs. the Des Moines Navigation and Railroad Company, No. 204 of December term, 1866, as the same remains upon the files of the said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Supreme Court, at the city of Washington, this 8th day of September, A. D. 1870.

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court, U. S.

[Stamp.]

114 The following is a copy of the evidence filed in the case of William Baker against Jesse Williams, and by stipulation of parties was used as evidence on the trial of the said cause of The Cedar Rapids & Mo. R. R. R. Co. et al. against Jno. H. Martindale et al.:

NUMBER 36.

Iowa Central Air-Line Railroad.—Supplemental list of lands.—Act of 15th of May, 1856.—Fort Des Moines District, Iowa.—Six-mile limits.—Approved April 7th, 1863.—Now Cedar Rapids and Missouri River Railroad lands by act of Congress and the State of Iowa.

GENERAL LAND-OFFICE, *April* 11, 1863.

I, J. M. Edmunds, Commissioner of the General Land-Office, do hereby certify that the annexed, on pages one to four, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) J. M. EDMUNDS,
Commissioner of the General Land-Office.

115 *The Iowa Central Air-Line Railroad.—Supplemental list of lands in the district of lands subject to sale at Fort Des Moines, within the six-mile limits granted to the State of Iowa by the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections, designated by odd numbers, for six sections in width on each side of the railroad "from Lyons City northwesterly to a point of intersection with the main line of The Iowa Central Air-Line Railroad, near Maquoketa; thence on said main line running as near as practicable to the forty-second parallel across the said State to the Missouri River."*

North of base line and west of the fifth principal meridian, Iowa. The Iowa Central Air Line Railroad list. Fort Des Moines district. Six-mile limits.

No.	Parts of section.	Sec.	Town.	Range.	Acres.
1	W. h'f of sec.; W. h'f of N. E. q'r, and W. h'f of S. E. q'r	7	83	25	467.98
2	All of	19	83	25	653.08
3	W. h'f of N. W. q'r	29	83	25	80.00
4	S. W. q'r of S. W. q'r	31	84	25	42.48
5	N. h'f of sec	3	82	26	328.00
6	Lots 4, 5, 6, 7, 8; N. W. q'r of N. E. q'r; N. h'f of N. W. q'r	5	82	26	288.90
7	S. W. q'r of N. W. q'r; W. h'f of S. W. q'r, and S. E. q'r of S. W. q'r	5	82	22	160.00
8	All of	1	83	26	521.60
9	W. h'f of sec.; W. h'f of N. E. q'r	3	83	26	314.86
10	S. h'f of sec.; E. h'f of N. E. q'r	5	83	26	373.00
11	Lots 2, 3, 4, 5, 6; E. h'f of N. E. q'r	7	83	26	264.63
12	W. h'f of N. W. q'r, and N. W. q'r of S. W. q'r	7	83	26	108.92
13	All of	9	83	26	640.00
14	E. h'f of sec.; E. h'f of N. W. q'r	11	83	26	400.00
15	N. W. q'r of N. W. q'r, and S. h'f of S. W. q'r	11	83	26	120.00
16	All of	13	83	26	640.00
17	N. W. q'r; W. h'f of S. W. q'r	15	83	26	240.00
18	Lots 1, 2, 3, 4, 6, 7, 8, and N. E. q'r	17	83	26	433.50
19	N. h'f of N. W. q'r	17	83	26	80.00
20	All of	19	83	26	616.98
21	All of	21	83	26	631.32
22	All of	23	83	26	640.00
23	All of	25	83	26	640.00
24	All of	27	83	26	640.00
25	All of	29	83	26	592.36
26	All of	31	83	26	620.00
27	All of	33	83	26	574.92
28	W. h'f of sec.; N. E. q'r, and N. h'f of S. E. q'r	35	83	26	560.00
29	All of	3	84	26	713.70
30	All of	5	84	26	718.52
31	All of	7	84	26	603.01
32	All of	9	84	26	640.00
33	All of	11	84	26	640.00
34	All of	15	84	26	640.00
35	All of	17	84	26	640.00
36	All of	19	84	26	624.50
37	All of	21	84	26	640.00
38	W. h'f of sec.; W. h'f of N. E. q'r	23	84	26	400.00
39	N. E. q'r of N. E. q'r, and W. h'f of S. E. q'r	23	84	26	120.00
40	W. h'f of S. W. q'r	25	84	26	80.00
41	All of	27	84	26	640.00
42	All of	29	84	26	640.00
43	All of	31	84	26	599.76
44	All of	33	84	26	640.00
45	All of	35	84	26	640.00
46	S. h'f of sec	27	85	26	320.00
47	All of	31	85	26	618.16
48	All of	33	85	26	640.00
49	W. h'f of sec.; W. h'f of N. E. q'r; W. h'f of S. E. q'r	35	85	26	480.00
50	All of	1	82	27	633.66
51	All of	3	82	27	639.68
52	All of	1	83	27	481.07
53	All of	3	83	27	528.04
54	All of	5	83	27	525.24
55	All of	7	83	27	646.08
56	All of	9	83	27	640.00
57	All of	11	83	27	640.00
58	All of	13	83	27	640.00
59	All of	15	83	27	640.00
60	All of	17	83	27	640.00
61	All of	21	83	27	640.00
62	All of	23	83	27	640.00

116

No.	Parts of section.	Sec.	Town.	Range.	Acres.
63	All of	25	83	27	640.00
64	All of	27	83	27	640.00
65	E. h'f of sec	33	83	27	320.00
66	All of	35	83	27	640.00
67	All of	1	84	27	657.85
68	S. h'f of sec	3	84	27	320.00
69	All of	5	84	27	706.24
70	All of	7	84	27	643.84
71	All of	9	84	27	640.00
72	All of	11	84	27	640.00
73	All of	13	84	27	585.56
74	All of	15	84	27	640.00
75	All of	17	84	27	640.00
76	All of	19	84	27	643.84
77	All of	21	84	27	640.00
78	All of	23	84	27	579.25
79	All of	25	84	27	629.74
80	All of	27	84	27	635.53
81	All of	29	84	27	640.00
82	All of	31	84	27	645.20
83	All of	33	84	27	640.00
84	All of	35	84	27	599.22
85	E. h'f of sec.; E. h'f of N. W. q'r; N. E. q'r of S. W. q'r	1	83	28	352.25
86	All of	1	84	28	696.26
87	E. h'f of N. E. q'r	11	84	28	80.00
88	E. h'f of sec.; E. h'f N. W. q'r; and E. h'f of S. W. q'r	13	84	28	480.00
89	All of	25	84	28	640.00
	Total				46,898.73

Making, in the aggregate, forty-six thousand eight hundred and ninety-eight acres and seventy-three hundredths of an acre.

GENERAL LAND OFFICE, *February* 26, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to three, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the altefnate sections designated by odd numbers for six sections in width on each side of the railroad, "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa; thence on said line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River," "and known as the Iowa Central Air-Line Railroad," within the State of Iowa; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[L. S.] (Signed) J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.

(Signed) J. P. USHER,
Secretary.

117 NUMBER 37.

GENERAL LAND OFFICE, *April* 11, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to four, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) J. M. EDMUNDS,
Commissioner of the General Land Office.

The Iowa Central Air-Line Railroad.—Supplemental list of lands in the district of lands subject to sale at Fort Des Moines, outside of the six, and within the fifteen, mile limits of the reserve to satisfy the grant made to the State of Iowa by the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad, "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River," and in lieu of the lands in the alternate sections designated by odd numbers, within said six sections in width, which the United States had legally sold or otherwise appropriated, or to which the right of pre-emption has attached.

North of base line and west of the fifth principal meridian, Iowa. The Iowa Central Air-Line Railroad list. Fifteen-mile limits. Fort Des Moines district.

No.	Parts of sections.	Sec.	Town.	Range.	Acres.
1	W. ½ of S. W. ¼, and S. E. ¼ of S. W. ¼	7	81	24	127.32
2	W. ½ of S. W. ¼, and S. E. ¼ of S. W. ¼	1	81	25	120.00
3	All of	3	81	25	616.55
4	All of	5	81	25	617.84
5	All of	7	81	25	674.16
6	All of	9	81	25	640.00
7	All of	11	81	25	640.00
8	All of	5	82	25	635.18
9	All of	7	82	25	658.86
10	W. ½ of N. W. ¼; W. ½ of S. W. ¼; and S. E. ¼ of S. W. ¼	9	82	25	200.00
11	All of	17	82	25	640.00
12	W. ½ of sec.; W. ½ of S. E. ¼; N. E. ¼ of S. E. ¼	21	82	25	440.00
13	W. ½ of N. E. ¼, and S. E. ¼ of N. E. ¼	21	82	25	120.00
14	W. ½ of S. W. ¼, and S. W. ¼ of N. W. ¼	27	82	25	120.00
15	All of	29	82	25	640.00
16	All of	31	82	25	663.10
17	All of	33	82	25	640.00
18	S. W. ¼	29	83	25	160.00
19	All of	31	83	25	665.52
20	S. E. ¼	1	81	26	160.00
21	E. ½ of sec.; N. W. ¼; N. ½ of S. W. ¼	3	81	26	500.56
22	All of	5	81	26	595.26
23	All of	7	81	26	612.08
24	All of	9	81	26	640.00
25	Lots 5, 6, 7, 8, 9, and S. W. ¼ of S. W. ¼	11	81	26	302.04
26	N. ½ of sec.; lot 1, E. ½ of S. E. ¼	13	81	26	409.35
27	All of	15	81	26	640.00
28	All of	17	81	26	640.00
29	All of	19	81	26	612.00
30	All of	21	81	26	640.00
31	E. h'f of sec., and N. W. q'r	23	81	26	480.00
32	N. h'f of N. E. q'r; E. h'f of S. E. q'r; S. W. q'r of S. E. q'r	1	82	26	197.96
33	W. h'f of S. W. q'r, and S. E. q'r of S. W. q'r	1	82	26	120.00
34	S. h'f of sec	3	82	26	320.00
35	All of	7	82	26	608.00
36	All of	9	82	26	598.46
37	E. h'f of sec., and N. W. q'r	11	82	26	480.00
38	All of	13	82	26	640.00
39	All of	15	82	26	597.58
40	All of	17	82	26	640.00
41	All of	19	82	26	613.24
42	All of	21	82	26	640.00

No.	Parts of section.	Sec.	Town.	Range.	Acres.
43	E. h'f of sec., and N. W. q'r	23	82	26	480.00
44	Lots 1, 2, 3, 4, 5, 6, 7; E. h'f of S. E. qr	27	82	26	320.36
45	W. h'f of N. W. q'r, and N. E. q'r of N. W. q'r	27	82	26	120.00
46	All of	29	82	26	640.00
47	All of	31	82	26	621.60
48	All of	33	82	26	640.00
49	S. h'f of sec	35	82	26	320.00
50	W. h'f of N. W. q'r; S. E. q'r of N. W. q'r; S. W. q'r	3	85	26	277.28
51	All of	5	85	26	629.54
52	All of	7	85	26	611.98
53	All of	9	85	26	640.00
54	W. h'f of sec.; S. W. q'r of N. E. q'r	15	85	26	360.00
55	W. h'f of S. E. q'r, and S. E. q'r of S. E. qr	15	85	26	120.00
56	All of	17	85	26	640.00
57	All of	19	85	26	616.30
58	All of	21	85	26	640.00
59	W. h'f of N. W. q'r; S. W. q'r	23	85	26	240.00
60	N. h'f of sec	27	85	26	320.00
61	All of	29	85	26	640.00
62	All of	1	81	27	593.64
63	N. E. q'r; E. h'f of S. E. q'r	11	81	27	240.00
64	N. h'f of sec.; S. E. q'r; E. h'f of S. W. q'r	13	81	27	560.00
65	N. E. q'r; E. h'f of S. E. q'r	9	82	27	240.00
66	All of	11	82	27	640.00
67	All of	13	82	27	640.00
68	All of	15	82	27	640.00
69	All of	23	82	27	640.00
70	All of	25	82	27	640.00
71	N. E. q'r of N. E. q'r	27	82	27	40.00
72	E. h'f of sec.; E. h'f of N. W. q'r, and E. h'f of S. W. q'r	35	82	27	480.00
73	N. h'f of sec	3	84	27	390.78
74	All of	1	85	27	627.58
75	All of	3	85	27	582.14
76	All of	5	85	27	643.58
77	All of	7	85	27	638.60
78	All of	9	85	27	640.00
79	All of	11	85	27	590.64
80	All of	13	85	27	640.00
81	All of	15	85	27	605.51
82	All of	17	85	27	640.00
83	All of	19	85	27	644.80
84	All of	21	85	27	640.00
85	All of	23	85	27	617.57
86	All of	25	85	27	640.00
87	All of	27	85	27	597.60
88	All of	29	85	27	640.00
89	All of	31	85	27	645.40
90	All of	33	85	27	640.00
91	All of	35	85	27	621.60
92	All of	1	85	28	645.60
93	E. h'f of sec	11	85	28	320.00
94	All of	13	85	28	640.00
95	E. h'f of N. E. q'r; E. h'f of S. E. q'r, and S. W. q'r of S. E. q'r	23	85	28	200.00
96	All of	25	85	28	640.00
97	E. h'f of sec	35	85	28	320.00
	Total				49,387.16

Making in the aggregate forty-nine thousand three hundred and eighty-seven acres and sixteen hundredths of an acre.

(Between the six and fifteen mile limits.)

GENERAL LAND OFFICE,
February 26, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to three, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits, under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate
119 sections, to aid in the construction of certain railroads in said State," the said selections being from the lands of the United

States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the railroad "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line running as near as practicable to the forty-second parallel across the said State to the Missouri River," known as "The Iowa Central Air-Line Railroad," and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the rights of pre-emption had legally attached, prior to the period at which the rights of the State enured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all the conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[L. S.] (Signed) J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.
(Signed) J. P. USHER,
Secretary.

NUMBER 38.

GENERAL LAND OFFICE, *April* 11, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to two, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) J. M. EDMUNDS,
Commissioner of the General Land Office.

The Iowa Central Air-Line Railroad.—Supplemental list of lands in the district of lands subject to sale at Fort Dodge, outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections, within six sections in width on each side of the railroad, "from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line running as near as practicable to the forty-second parallel across the said State to the Missouri River," and in lieu of the lands in the alternate sections designated by odd numbers, within said six sections in width, which the United States had legally sold or otherwise appropriated, or to which the rights of pre-emption have attached.

120 North of base line and west of the fifth principal meridian, Iowa. The Iowa Central Air-Line Rail road list. Fort Dodge district. Fifteen-mile limits.

No.	Parts of section.	Sec.	Town.	Range.	Acres.
1	W. ½ of sec.; W. ½ of N. E. ¼	11	86	26	400.00
2	N. E. ¼ of N. E. ¼, and W. ½ of S. E. ¼	11	86	26	120.00
3	All of	15	86	26	640.00
4	All of	17	86	26	640.00
5	All of	19	86	26	607.76
6	All of	21	86	26	640.00
7	All of	29	86	26	640.00
8	All of	31	86	26	607.84
9	All of	33	86	26	640.00
10	All of	13	86	27	640.00
11	All of	19	86	27	632.60
12	All of	21	86	27	596.88
13	All of	23	86	27	640.00
14	All of	25	86	27	640.00
15	All of	27	86	27	591.16
16	All of	29	86	27	640.00
17	All of	31	86	27	634.72
18	All of	33	86	27	640.00
19	All of	35	86	27	640.00
20	E. ½ of N. E. ¼; E. ½ of S. E. ¼	15	86	28	160.00
21	All of	23	86	28	640.00
22	All of	25	86	28	640.00
23	E. ½ of N. E. ¼; E. ½ of S. E. ¼	27	86	28	160.00
24	All of	35	86	28	640.00
	Total				13,470 96

Making in the aggregate thirteen thousand four hundred and seventy acres and ninety-six hundredths of an acre.

(Between the six and fifteen mile limits.)

GENERAL LAND OFFICE,
February 26, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing on page one is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits, under the act of Congress, approved the 15th of May, 1856, entitled, "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," the said selections being from the lands of the United States, in the alternate sections designated by odd numbers most contiguous to the tiers of sections within six sections in width on each side of the railroad, "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line, run'ing as near as practicable to the forty-second parallel across the said State to the Missouri River," and known as "The Iowa Central Air-Line Railroad," and being in lieu of the land in the alternate sec-

tions designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State enured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[L. S.] (Signed) J. M. EDMUNDS,
Commissioner.

121 DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights abovementioned.

(Signed) J. P. USHER,
Secretary.

EXHIBIT N.

GENERAL LAND OFFICE, *April* 17, 1867.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exmplification of the original certificate on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) JOS. S. WILSON,
Commissioner of the General Land Office.

State of Iowa to Hon. J. P. Usher, Secretary of the Interior, Washington, D. C.:

I, W. M. Stone, governor of the State of Iowa, do hereby certify that the Cedar Rapids and Missouri River Railroad Company, organized under the laws of the State of Iowa, have completed and put in operation one section of twenty continuous miles, "running as near as practicable to the forty-second (42d) parallel," in accordance with the laws of Congress and of this State in relation thereto.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines this 31st day of October, A. D. 1864.

[L. S.] W. M. STONE.

By the governor:

JAMES WRIGHT.
Secretary of State.

EXHIBIT O.

GENERAL LAND OFFICE, *April* 17, 1867.

I, Jos. S. Wilson, Commissioner of the General Land Offie, do hereby certify that the annexed is a true and literal exemplification of the original certificate on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOS. S. WILSON,
Commissioner of the General Land Office.

State of Iowa to Hon. J. P. Usher, Secretary of the Interior, Washington, D. C.:

I, W. M. Stone, governor of the State of Iowa, do hereby certify that the Cedar Rapids and Missouri River Railroad Company, organized under the laws of the State of Iowa, have completed and put in operation two more sections of twenty continuous miles each, making in all sixty continuous miles of their road, "running as near as practicable to the forty-second (42d) parallel," in accordance with the laws of Congress and of this State in relation thereto.

122 In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, this 31st day of October, A. D. 1864.

[L. S.]

W. M. STONE.

By the governor:

JAMES WRIGHT,
Secretary of State.

EXHIBIT P.

STATE OF IOWA, *Executive Department:*

To Hon. James Harlan, Secretary of the Interior, Washington, D. C.:

I, W. M. Stone, governor of the State of Iowa, hereby, in accordance with the laws of the United States, and of this State, certify that the Cedar Rapids and Missouri River Railroad, a company organized under the laws of this State, have completed an additional section of twenty miles, being the sixth consecutive section of twenty miles, each built by said road, running, as nearly as practicable, to and along the forty-second parallel of latitude, as required by law.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines this 24th day of March, A. D. 1866.

[L. S.]

W. M. STONE.

By the governor:

JAMES WRIGHT,
Secretary of State.

EXHIBIT Q.

STATE OF IOWA, *Executive Department:*

To Hon. James Harlan, Secretary of the Interior, Washington, D. C.:

I, W. M. Stone, governor of the State of Iowa, hereby certify that the Cedar Rapids and Missouri River Railroad, a company organized under the laws of this State, had completed ready for the rolling-stock prior to the first of July, 1865, a section of more than twenty miles of said railroad, from the point which was the terminus of said railroad, on the second of June, 1864, as required by act of Congress, approved June 2nd, 1864, in section eight thereof.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, this 24th day of March, A. D. 1866, in the 20th year of the State.

[L. S.] W. M. STONE.

By the governor:

JAMES WRIGHT,
Secretary of State.

EXHIBIT R.

STATE OF IOWA, *Executive Department:*

This certifies, in accordance with the act of Congress, approved June 2, 1864, that the Cedar Rapids & Missouri River Railroad Company, organized under the laws of Iowa, had completed and ready for
123 the rolling-stock, prior to the first day of July, 1865, a section of more than twenty miles of said company's railroad, from the point which was the terminus of said railroad, on the second day of June, 1864; and also an additional section of more than twenty miles, between the first day of July, 1865, and July, 1866; and also another additional section of more than twenty miles, between the first day of July, 1866, and July, 1867, as required by act of Congress, approved June 2nd, 1864.

It is further certified that, in addition to the above, the said railroad has completed and put in operation seven additional sections of twenty miles each, and eleven miles and six-tenths of a mile of the next section of twenty miles, thus making in all thirteen consecutive sections of twenty miles each, and eleven miles and six-tenths of a mile over and beyond said thirteen sections—the same being altogether two hundred and seventy-one and six-tenths miles.

The said railroad is built, as near as practicable, to the forty-second parallel of latitude, across the State of Iowa to the Missouri River, on a *guage* of four feet eight and one-half inches, of a good quality of iron of approved pattern, with 2,640 ties to each mile, and in all respects equal to the average of other first-class western railroads, as required by, and in accordance with, the acts of Congress relating thereto, approved May 15th, 1856, and June 2nd, 1864, and the act of the general assembly of the State of Iowa, approved March 26th, 1860.

In testimony whereof I have hereunto affixed my name and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, this 2nd day of July, 1867, in the 21st year of the independence of the State of Iowa, and of the United States the ninety-first.

[L. S.] W. M. STONE,
Governor of Iowa.

By the governor:

ED. WRIGHT,
Secretary of State.

EXHIBIT U.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *January 8th*, 1869.

I, Joseph S. Wilson, Commissioner of the General Land Office, do

hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) JOSEPH S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *June 7th*, 1860.

Hon. J. THOMPSON,
Secretary Interior.

SIR: I have the honor to return herewith—

1st. Letter dated May 28th, 1860, from the chairman of the Committee on Public Lands of the Senate, enclosing petitions of citizens of Iowa.

2nd. Letter dated May 30th, 1860, from the same, enclosing S. R. No. 37.

124 3d. Letter dated June 1st, 1860, from the same, enclosing petitions of the president and secretary of the Dubuque and Pacific Railroad Company.

These refer to the lands which have been heretofore certified above the Raccoon Fork to the State of Iowa, under the Des Moines improvement grant, act of August 8th, 1846, the claim of the State to which falls to the ground under the recent decision of the Supreme Court of the United States, and, pursuant to your reference, respectfully submit the enclosed bill, which was presented for your consideration with the letters dated May 3d and 14th last, from this office, upon that subject. In connection with the matter, I also enclose for your consideration—

Copy, marked "A," of letter dated June 1st, 1860, from W. T. Steiger, esq.

Copy, marked B, of letter, no date, received 2d inst. from Charles Mason, esq.

Copy, marked C, of letter dated June 6th, 1860, from W. T. Steiger, esq.

Very respectfully, your ob't serv't,
JOS. S. WILSON, *Commissioner.*

WASHINGTON, *June 1st*, 1860.

Hon. JOSEPH S. WILSON,
Commis'r Gen'l Land Office.

SIR: Having been informed that the resolution introduced in the Senate by the Hon. Mr. Grimes, of Iowa, for confirming sales made by the State of certain lands on and near the Des Moines River and for other purposes, S. R. No. 37, has just been referred by the Committee on Public Lands of the Senate to the Secretary of the Interior for his views, and is now before you for report:

I respectfully ask, in behalf of the railroad companies, that the enclosed printed copy of the decision of the Supreme Court, referred to in the resolution, may be communicated to the committee; also, that the companies may have the benefit of the facts that the lands in question were, by agreement in adjusting the railroad grants at your office, placed in suspension to await the decision of the courts, and that since the decision of the Supreme Court was rendered they have been claimed and selected for the railroads, and particular lists and maps thereof filed by me, as their agent, in the General Land Office.

I am, very respectfully, your obedient servant,
W'M T. STEIGER, *Agent, &c.*

Hon JOSEPH S. WILSON.

SIR: By your permission I present the following points in relation to the question of relief to purchasers of Des Moines River lands:

The Supreme Court found its late decision on the ground—1st, that the grant originally extended no higher than the Raccoon Fork; and, 2nd, that Mr. Walker, in deciding differently, and Mr. Stuart and McClelland, in certifying the lands above that point, acted without authority of law; that their acts did not therefore bind the Government, and that, though the lands had been certified to the State, yet the title did not pass, but remained still in the United States, or passed by subsequent grant to the railroads.

It should be remembered that the Des Moines River grant was not a mere gratuity. It was, in fact, a proposition made which required the acceptance of the State before it took effect. Certain conditions
125 were prescribed to which the assent of the State was requisite. The proceeds of the lands were to be devoted to the improvement of the Des Moines River, which was thenceforward to remain forever a "public highway for the use of the Government of the United States, free from any toll or other charge for any property of the United States, or persons in their service, passing through or along the same." Such a grant is not a donation, but, when accepted, is a sale. A full consideration is paid by the grantee, and so it was held by Mr. Walker in his letter to Acting Commissioner Piper, of December 11th, 1846; and that ruling of his has never been reversed.

It does not follow that a corresponding benefit must result to the grantor in order to constitute a sufficient consideration for such a grant. An inconvenience to the grantee is just as good a consideration as a benefit to the grantor. If I agree to give a man a hundred acres of land, provided he will lie in bed for a year, it is a good consideration. When he has performed that condition he can demand the performance of the contract on my part. The transaction amounts to a sale of the land for a valuable consideration.

But in the present case there was to be a benefit conferred upon the United States. It was not merely from the fact that Iowa had done something, and engaged to do more, that this consideration is deduced, but an essential benefit was to result to the other party.

The United States said to the State of Iowa, we will grant you this land provided you will improve the Des Moines River and give us the free use of the same in its improved condition forever; just as any other proprietor might agree to give a portion of his property for the construction of a public highway that would render the remainder more valuable.

Now we have performed our part of this agreement, as far as performance was to be made up to the present time. We have, therefore, purchased the land, and made partial payment for the same, and we are ready to complete the payment when the proper time shall arrive.

The act of August 8th, 1846, declares that the land shall be selected subject to the approval of the Secretary of the Treasury. That officer was to decide what land was properly selected under that grant. He decided that the grant extended to the source of the river, and the selection was made accordingly. The case is precisely the same as if the selection had first been made by the agents of the State and afterwards approved by the Secretary.

In pursuance of this decision of the Secretary, some 270,000 acres of land lying above the Raccoon Fork was subsequently certified to the

State by the proper officers. It was received by the State as a portion of this grant.

It was sold to bona-fide purchasers, and the proceeds were applied to the improvement of the Des Moines River. The State had every reason to believe that the contract with the United States had been correctly expounded by the proper officers of that Government, and it made its plans accordingly. It commenced the improvement of its most important internal river on a scale different from what it would otherwise have done, and which it cannot complete unless that contract is carried out by the United States.

The navigation of that river, instead of being improved, is now nearly ruined, and by no fault of hers. It is filled with half-finished works in the shape of masses of timber and rocks, just enough to obstruct the navigation of the stream, without being of any service whatever.

126 If loss is to be sustained by some one in consequence of the error of public officers, what is more reasonable than that the Government by which they were appointed and trusted should sustain that loss? Had their acts been so clearly wrongful as to render it manifest that they had exceeded their power, the case would have been different. Collusion and fraud would then have been presumed on the part of the State, and of these it would be but just that she should reap the consequences.

But nothing of this nature is pretended; the extraordinary vascillations which have taken place in the decision of the different public functionaries attest this truth sufficiently, even if it were not evident from the language of the law itself. Besides that the true construction of this law is a matter of doubt, is broadly admitted on all hands, and by none more unequivocally than by the present Attorney General and his immediate predecessor.

In cases of doubt in the construction of a grant, on whom are we to rely for information, if not on the head of the proper department of the Government? And when, in accordance with the decision of that officer, individuals have obtained their titles to lands; when they have converted them into fruitful farms and thriving villages, should not the proprietors of those farms feel safe in their possessions? Should they be left to tremble for years lest these homesteads should pass, by some subsequent railroad grant, or be entered at the Land Office, or that they should be required to purchase their property anew from the United States?

The persons who held land along the Des Moines Valley, under State patents to lands certified by the Secretary of the Interior felt as safe in their titles as any landholders in this country. And they had full right to do so, for, in addition to the consideration above expressed, they had the unqualified opinion of Mr. Cushing in their favor. They had the letter of Mr. McClelland, of November 10th, 1856, concurring in that opinion, and declaring in express terms, that the acts done by the Department—so far as the lands had been certified—had completely divested the United States of their title, and transferred it to the State and its grantees.

I do not forget that the Supreme Court have decided that the strict law of this case differs from these views; but I am not now discussing a question of legal liability, but one of broad equity. The matter is now before a body which may not be disposed to avail themselves of their strict legal rights when satisfied that this cannot be done honorably and justly. A few years since Robert Schuyler was the authorized agent of certain railroad companies to issue and dispose of their stock to a certain

limited amount. He issued and sold more than he had any authority to do. Had he been acting in good faith, and had exceeded his power, merely from a misconstruction of his proper power, the case would have been parallel to this. That his acts were fraudulent as well as erroneous did nor certainly render them any more binding among the companies for which he was acting. Under these circumstances the companies refused to recognize their obligations for his acts. I am not certain as to whether the question as to their legal liability has ever yet been determined by the highest tribunals, but I do feel certain that, if the matter had been brought before the Supreme Court of the United States, and they had followed the rule adopted by them in the Des Moines River case, they would have held that the acts of this agent having been beyond the scope of his authority were null and void, and the holders of the stock so issued were without remedy.

127 Now suppose just such a decision to have been made, would not every right-minded man say, that the companies, though legally exonorated, were still morally bound to save innocent persons harmless —that for the wrongful act of an agent the principal should suffer, rather than a third party to whom he had been held forth by that principal as worthy of confidence. Can the United States repudiate the act of a Secretary of the Treasury or of the nation, with any better grace than a railroad company could do that of its executive officer? Such an act would serve as a most pernicious example, and, in the present condition of some portions of the country, would be followed by many who would rejoice in such a precedent.

In many of the States, bonds to a large amount have been issued by cities and counties for various purposes. If the rule were to be observed, that, when these bonds had not been issued in strict accordance with law, there was no legal or moral obligation to pay them, very few of the number would ever *be* held valid.

In my own State I know of millions of dollars which will be wholly lost to the bondholders if repudiation there is to be tolerated on the same grounds that must be resorted to by the United States in order to avoid liability for the acts and decisions of the heads of Departments.

Few if any of these bonds have ever been executed in strict accordance with law, and if a judicial decision of irregularity shall, by the example of the United States, be made a reputable mode of avoiding responsibility, our erroneous western corporate indebtedness will soon be wiped out of existence.

With regard to the county bonds in particular, I never doubted that they were issued without legal authority. At the time this was done every one was running wild with the excitement of speculation and railroad building. The supreme court of the State so far, felt the influence of this popular impulse that two of the three judges held these bonds legal. With a change in the times and in the public sentiment has come an entire change in the members of the court. Every one of the present judges is of the opinion that these bonds were illegally issued in the first instance, and the only question now is whether they shall be held invalid absolutely, or whether, having been sold and gone into the hands of bona-fide purchasers they shall not be held valid, and the counties be made to suffer the consequences of the acts of their agents, however wrongful or illegal they may have been.

The last I knew of the action of the court, that question seemed still in suspense. Public sentiment seemed to be generally in favor of payment.

The same district court of the United States which has, in the Des

Moines River case, held that the Government was bound by the acts of the heads of Departments, has also decided that the counties should pay the bonds which had gone into the hands of innocent purchasers; but the court at the same time intimated an opinion that, as a question of new impression, such bonds would have been held invalid.

That question will probably come to the Supreme Court of the United States. If they follow the rule recently laid down by themselves, they will hold the bonds invalid, and then will come the question whether the moral sense of the people will be sufficient to induce them to make a payment which cannot be enforced. The example set by the United States will very probably be followed, for men are but too apt to follow a precedent which promotes their self-interest. I speak of the condition of things in Iowa, as I am there best acquainted, but I doubt not a similar condition of things exists elsewhere. The mine is pre-
128 pared and needs but the spark to cause the explosion. An example set by the United States will be sufficient for this purpose, and a general scene of repudiation will very probably spread over the deeply-indebted cities and counties of the West.

My belief is, that the United States can neither with honor nor safety repudiate the acts of their accredited agents, even if they have so far exceeded their power as to render those acts illegal; that, as far as they now have it in their power, they should not only hold harmless all innocent purchasers of property transferred by those heads of departments, but that, in all respects, they should carry out toward the State the same rule of action that would have been followed had all the different Secretaries been acting within the scope of their legitimate authority in all that they have done—at least to the extent that the State shall suffer no detriment from their erroneous or wrongful acts.

The joint resolution now under consideration will, if adopted, produce that result in part, and I trust it will secure the sanction of the Department. Such an example will not be without its effect; and, finally, should the worst happen, public honor requires that the first great impulse toward repudiation should not have been given by that Government around which our hopes and our affections so earnestly cling.

In order to make the arrangement entirely efficacious by securing the acquiescence of the railroad companies, I would respectfully suggest such an amendment of the joint resolution as to allow the selection of the even-numbered sections along the line of the respective railroads in lieu of any of the odd-numbered sections held by any of these railroads under the grant of 1856, which had been previously certified to the State, and sold by it to bona-fide purchasers. This would doubtless enable us to make such arrangements as would deprive no one of the property he had honestly purchased.

Respectfully yours,

CHARLES MASON.

WASHINGTON, *June 6th*, 1860.

Hon. JOSEPH S. WILSON,
Commis'r Gen'l Land Office.

SIR: In behalf of the Iowa railroads, permit me, in reply to the argument of Charles Mason, esq., filed in the case of the Des Moines River improvement lands, in Iowa, to call your attention, and through you that of the Department and the committee of Congress, to the simple fact that, long before the certification of any lists of lands above the Raccoon Fork, the State was repeatedly notified by the De-

partment that her claim to those lands under the act of Congress, and the decision of Secretary Walker of 2nd March, 1849, was illegal and untenable.

That the first notice was contained in the decision of Secretary Ewing, bearing date the 6th of April, 1850, in which he held that the grant did not go above the Raccoon Fork, and refused to approve lists. That the State authorities were again notified in the decision of Secretary Stuart, of 26th July, 1851, fully concurring in the view of Mr. Ewing, and finally that in certifying the first list on the 30th October, 1851, as was done in all the lists subsequently approved to the State, upon which it is claimed that the State based her sales, notice was given on their face that the approval was made subject to the decision of the courts,
129 and subject to any valid interfering rights, and that the State and the public had notice besides, through large masses of official correspondence up to the present time.

Hence, it is a fact that the State and her purchasers and assigns, had ample notice.

They were not, therefore, innocent purchasers without notice, and it follows, I think, that the whole argument and appeal of Mr. Mason, resting, as it does, upon this ground, is inapplicable to the case.

I am, very respectfully, your obedient servant,

W'M T. STEIGER, *Agent, &c.*

P. S. I enclose duplicate of the above, to save copying.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 29, 1868.

I, Orville H. Browning, Secretary of the Interior, do hereby certify that the annexed are true copies from the records of this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed the day and year above written.

[L. S.]. (Signed) O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, *June 11th*, 1860.

SIR: Herewith I have the honor to transmit a copy of the report of the Commissioner of the General Land Office of the 7th inst., upon Senate joint resolution No. 37, and the memorial relative to certain tracts of land heretofore certified to the State of Iowa, as part of the grant made to said State by the act of Congress of 8th August, 1846, and to return all the papers submitted with your several letters of the 28th and 30th ultimo, and the 1st instant.

The Commissioner has sent with his report copies of two letters addressed to him by W. T. Steiger, esq., and one by Hon. Charles Mason, agents of the State, and having reference to the lands in question, and which it appears to be proper to lay before you. The draft of a bill is also herewith enclosed, which was furnished to Hon. Ja's W. Grimes, in a letter of this Department, dated the 22nd ultimo, of which I also enclose a copy.

In the matter of the grant for the improvement of the Des Moines River, as also adjusting the later grants for railroad purposes, the Department deals directly with the State, and not with parties claiming under her.

To a portion of the lands to which the joint resolution No. 37 relates, two claims under different laws of Congress have been preferred on behalf of the State.

The draft of a bill which I furnished to the Hon. J. W. Grimes, contains such provisions as would enable the State to make a fair settlement with the parties who claim adversely to each other, under the respective grants, but does not depart from the simple proposition—that the same tracts of land have only been once granted to the same grantee.

Since my letter to Senator Grimes was prepared, I have modified my views to some extent, and am now prepared to recommend the confirmation on the basis of the Department's draft of a bill of all the lands in contest which have been sold, granted, or conveyed by the State, and should this suggestion meet the approval of the committee, the end proposed would be attained by striking out from the first section of the bill the following words, viz: "And have been settled upon and cultivated," (see lines 9 and 10,) and inserting in their stead the words "or granted or conveyed."

It will be perceived that the bill of the Department proposes a settlement between the United States and Iowa, as a condition of the confirmation of the claim of the State to the tracts that have been certified to her improperly by the Department. This plan I regard as strictly just, in view of the decision of the Supreme Court, that said tracts constitute no part of the grant for the improvement of the Des Moines River.

Should Congress, however, be willing to confirm the acts of my predecessors, and relinquish to the State all title now remaining in the United States in the tracts so improperly certified, I think that legislation should be confined to that single proposition.

The joint resolution No. 37, now before me, uses some very general and indefinite terms. The preamble is objectionable as giving but a limited recital of facts, such as have an argumentative bearing in favor of the propositions of the joint resolution.

Inasmuch as a fair recital of all the important facts would be cumbersome, I respectfully suggest the omission altogether. The second part of the resolution is, in my opinion, liable to misconstruction, and likely to give rise to controversy as to its true meaning. Its probable effect would be, should it become a law, to secure to the State more land than this Department has ever recognized as having been granted.

In addition to a confirmation of all the tracts embraced in the list certified by the Secretaries of the Treasury and Interior, it appears to contemplate the allowance of scrip or selection in all cases in which any of the lands on said lists have been otherwise "transferred," which would amount to an additional grant of so much land as is now involved in controversy between parties claiming adversely to each other, under the State of Iowa; the understanding of this Department being that the State has transferred to individuals, and an incorporated company, all the lands falling to her under Des Moines grant, and to certain railroad companies, all the lands which she will receive under the grants for the construction of railroads.

Three of the lines of the Iowa land-grant roads cross the strip of country along the Des Moines River where the lands lie which have been improperly certified under the Des Moines grant, and a large body of land is claimed under both titles.

Heretofore this Department has refused to recognize the claim under the railroad grant of May 15th, 1856, because it had approved the selections of the same lands, under an earlier grant, that of 8th August, 1846, the uniform construction of railroad grants having been that they confer nothing upon a State, either as granted in place or as a basis of indemnity selections, where they interfere with prior grants to the same State. But now, since the Supreme Court of the United States has decided that

the certification of the lands along the Des Moines River, above the mouth of the Raccoon Fork, has conferred no title, and that the land was no part of the Des Moines grant, the claim of the State to a large portion of the same land, under the grant for railroad purposes can no longer be called in question, and the second title saves the land embraced by it to the grantee, although the prior title is regarded as worthless.

In this state of facts, it appears to me to be sufficient for the United States to assent to a relinquishment of any title which may still remain in them to the land erroneously certified to the State of Iowa,
131 leaving the State and those claiming under her to settle the controversies which arise under the State laws, in the courts of the State.

If the State is called upon to settle with the United States, and accedes to the proposition, there appears to be some propriety in advancing to her land scrip with which to satisfy her own double grants of the same lands; but if she is not called upon for a settlement with the United States, I am unable to perceive any principle upon which more land should now be granted her, in order that she may settle with persons to whom she has twice conveyed the same tract.

As adapted to carry out this simple proposition, I have the honor to submit the following form of a joint resolution, viz.:

Resolved by the Senate and House of Representatives of the United States in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the Raccoon Fork thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8th, 1846, be, and the same is hereby, relinquished to the State of Iowa.

Beyond this simple proposition, the question arising upon the joint resolution No. 37, appears to be this: Shall the United States, because of the doing of void acts by her executive officers in the Land Department, grant more land to Iowa than she could have had, if the void act complained of had been clothed with the full authority of law.

Very respectfully, your ob't servant,

J. THOMPSON,
Secretary.

Hon. R. W. JOHNSON,
Ch'r Com. Pub. Lands U. S. Senate.

EXHIBIT V.

The following is an extract from the debates in the House of Representatives, February 2nd, 1861. (See Cong. Globe, part 1st, 2nd session, XXXVI Congress, page 710.)

TITLE TO CERTAIN LANDS IN IOWA.

Mr. TRIMBLE: By the instruction of the Committee on Public Lands, I desire to report a joint resolution to quiet title to certain lands in the State of Iowa, and to ask that the same considered now, and put upon its passage.

The bill, which was read, provides that all the title which the United States still retains in the tracts of lands along the Des Moines River, above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have heretofore been certified to that State improperly by the

Secretary of the Interior, as part of the grant approved under the act of August 8, 1846, be relinquished to the State of Iowa.

Mr. TRIMBLE. If there is any objection made to it, such objection may be removed by an explanation which will not occupy more than two minutes.

Mr. THOMAS. I would like to have the bill explained.

Mr. TRIMBLE. In 1846 the Congress of the United States made a grant of land to the State of Iowa to aid in the improvement of the navigation of the Des Moines River. The Secretary of the Interior certified to that State some four hundred thousand acres of land above the
132 mouth of the Raccoon Fork of that river. It has been decided by the Supreme Court of the United States that those lands were improperly certified. A subsequent grant made by Congress to the State of Iowa, for railroad purposes, covers the whole of these four hundred thousand acres, with the exception of about one thousand acres. These lands, therefore, do not revert to the Government of the United States in consequence of that decision, but are still to be retained by the State for railroad purposes. These lands have been sold to actual settlers, who have paid their money for them. They are now occupied, and there are three or four towns built upon them. There are, to my actual knowledge, lands among them worth from fifty to sixty dollars per acre. The settlers want their titles confirmed. The State sold and patented the lands to the present occupants; and all this resolution asks is, that their titles may be confirmed. This resolution is drawn up, and its adoption recommended, by the Secretary of the Interior.

Mr. PHILIPS. If I am not mistaken, this question was before the late Secretary of the Interior for his decision; and there has recently been some action upon it by that Department. Is not that so?

Mr. TRIMBLE. It is. I have had the matter in my hands since the last session of Congress, and during the present session. The result of the deliberations of the Interior Department is the recommendation of the adoption of this resolution, which, as I said before, was drawn up by the Secretary of the Interior.

Mr. PHELPS. Then it met with the approval of the Commissioner of the General Land Office, and of the late Secretary of the Interior, Mr. Thompson.

Mr. TRIMBLE. Accompanying the resolution is a communication from the Secretary of the Interior, giving his reasons for recommending its passage.

No objection being made, the resolution was received, read a first and second time, and ordered to be engrossed and read a third time; and, being engrossed, it was accordingly read the third time and passed.

Mr. TRIMBLE moved to reconsider the vote by which the resolution was passed; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

Extract of debate in U. S. Senate, Feb. 23d, 1861. (Cong. Globe, part II, 2nd session, XXXVI Congress, page 1130.)

Mr. HARLAN. I now renew my motion to take up House joint resolution No. 70.

Mr. LANE. What is the joint resolution?

Mr. HARLAN. A joint resolution to quit title to lands in the State of Iowa.

Mr. GREEN. I hope that it will not be taken up now. It involves a

great deal more than would be supposed from its face. It involves five or six hundred thousand acres of land.

Mr. HARLAN. It will appear from the reading of the *of the* report of the House committee, that the Senator from Missouri is entirely mistaken. It involves the title to but a very small quantity of land that would not be conveyed to Iowa under other grants. My colleague and myself do not propose to debate the question, but we desire to have a vote.

The motion was agreed to, and the joint resolution (H. R. No. 70) to quit titles to lands in the State of Iowa, was considered as in committee of the whole. It proposes to relinquish to the State of Iowa, all
133 title which the United States still retains in the tracts of land along the Des Moines River and above the mouth of the Raccoon Fork thereof, which have been heretofore certified to the State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8, 1846.

Mr. GREEN. I regard it as my duty to make a little explanation of this joint resolution. The title of it reads, "A joint resolution to quit title." Such a title to a bill or joint resolution I have never seen before. "Quit title!" It means to surrender all the title the Government of the United States has. Now, I will give the Senate a little history of this Des Moines grant.

In 1846, the first grant was made to make a slack-water navigation on the Des Moines River, from its mouth to Raccoon Fork. About sixty miles that river makes a common boundary with the State of Missouri; and if the slack-water navigation had been made according to the terms of the grant, Missouri, having a town at the mouth, and being contiguous for about sixty miles, would have participated largely in its benefits. But instead of that they went to work, and every superintendent who has touched it has become immensely rich; the lands granted have been wasted away, and the navigation of the Des Moines is absolutely injured. Instead of coming down to the mouth, when they got down to St. Francisville they undertook to cut a canal, and diverge from the Des Moines River around to the town of Keokuk. That was in violation of the true intent and purpose of the grant. Next, the question came up, how much land passed under that grant? Mr. Stuart, according to my recollection—or perhaps it was Mr. Ewing; I am not certain which—decided that it went up to the northern line of the State; and a small portion of land was certified to it lying north of the Raccoon Fork. The language of the grant is so express that I do not see how any one could misunderstand it. That grant extended only to the terminus of the improvement. The terminus of the improvement was the Raccoon Fork. Iowa was again dissatisfied, and claimed it up to the source of the river, up into the State of Minnesota. The Des Moines River rises in Minnesota, and Iowa claimed the land all the way up to the head spring of the river. Mr. Thompson, Secretary of the Interior, said he was willing to abide by the act of his predecessor, if Iowa would be content with it. Iowa said she was not content, and insisted on going to the head springs of the river, away up into the State of Minnesota, where no navigation could possibly be had of the river. An agreed case was made. The Secretary of the Interior said: "If you will take the question before the Supreme Court of the United States, I will make my decision conform to the decision of the Supreme Court." They broug't up the case, and Judge Mason argued it. It was decided by the Supreme Court that the grant did not go one inch above the Raccoon Fork, which is about the middle of the State of Iowa. There it ends.

Now, the object is, to get the lands lying above the Raccoon Fork. If it goes up to the State line, it will be about four hundred and fifty thousand acres. If it goes up to the source of the river, it will be about six hundred thousand acres. That is the case we are acting on. It is true, I would rather let Iowa have the land than throw it away in useless homesteads; but the true policy of the Government is, to administer the lands in that manner which will best promote the public interests; and I think that this is not a fair mode of disposing of the
134 public lands. I am willing that Iowa should have, and she now has, the alternate sections on each side of the river, six miles in width, up to the Raccoon Fork.

There is another difficulty. North of the Raccoon Fork, land grants have been made to railroad companies, running east and west from the Mississippi River, across to the Missouri. Under the decision of the Supreme Court, the original grant did not include anything north of the Raccoon Fork. These railroads do cross north of the Raccoon Fork; and grants have been made in good faith, permanent and binding, to those railroad companies. They can hold them, therefore, in spite of the United States; and I do not want to be engaged in the folly of undertaking to say I will quit title where there is no title. Wherever these lands fall within the limits of railroad grants, we have no title; and wherever they are outside of those railroad grants, Iowa has no right to them. That is an end of the case.

Mr. HARLAN. As an answer to the speech of the Senator from Missouri, I ask that the report of the House committee may be read.

The Secretary read as follows:

"The committee on Public Lands, to whom was referred the bill 'for the relief of the State of Iowa and for other purposes,' beg leave to report:

"That, by the act of Congress of August 8, 1846, the alternate sections, in a strip ten miles in width, lying along the Des Moines River, were granted to the State of Iowa, to aid in improving the navigation of the said river from its mouth to the Raccoon Fork. This grant was made on certain conditions, which were assented to, and the State undertook the execution of the trust.

"Not long afterwards, doubts were raised as to the extent of the grant; whether it was limited to lands lying below the mouth of the Raccoon Fork. or whether it extended to the source of the river. The question was carried before the then Secretary of the Treasury, who decided, on the 2d of March, 1849, in favor of the more extended grant, and the State proceeded to plan the work in correspondence with the means thus provided for its execution.

"After the lapse of something more than a year, the same question was again raised. The Secretary of the Interior, before whom the matter was brought, held that the grant did not extend above the Raccoon Fork; but, after an appeal had been carried before the President, and twice referred to two different Attorneys General, by whom the subject was carefully considered, it was determined, on the 29th of October, 1851, that the claim of the State should be allowed, and that the lands should be certified which lay above the Raccoon Fork. Within two years from that date above four hundred thousand acres of land lying above the Raccoon Fork were certified to the State by the Interior Department. This land has all been sold by the State, and the proceeds applied to the improvement of the Des Moines River, in compliance with the conditions of the grant. A large proportion of these lands are now occupied by actual settlers, all holding under patents from

the State, which are founded on certificates from the Secretary of the Interior.

"Within the past year the Supreme Court of the United States has decided against the construction put upon the act of August, 1846, by the Secretaries of the Treasury and Interior, and the Attorney General, that the titles by which the lands are now held are wholly nugatory; and that, notwithstanding the certificates and sales, they would still remain the property of the United States. But, on the 15th of July 1856,
Congress made another grant of land to the State of Iowa, to aid
135 in the construction of certain railroads herein specified. This grant covers all but about one thousand acres of the same land which had been certified and sold under the act of August, 1846, and is therefore beyond the reach and control of the Government of the United States. That portion not covered by the grant of July, 1856, would revert to the United States; but, in the judgment of your committee, it would be an act of gross injustice for this Government to repudiate the acts of its own highest officers, and thus deprive those persons of their possessions who have paid their money on the faith of the Government. They propose, however, nothing more than a relinquishment of the title held by the United States in the lands which have been certified by the Secretary of the Interior, under the Des Moines River grant, and afterwards sold to bona-fide purchasers. For this purpose your committee recommend the adoption of the following joint resolution, proposed and approved by the Secretary of the Interior."

Mr. GREEN. I believe that is the report of the committee of the House of Representatives; not of the committee of the Senate.

Mr. HARLAN. It is the report of the House Committee on Public Lands.

Mr. GREEN. The Committee of the House of Representatives are a little at fault. They undertake to say that we cannot repudiate the act of our own officer. Iowa repudiated it; would not stand by it, and claimed the land up to the source of the river. Then the Secretary said: "I will re-open the case, and submit it to the court."

Mr. GRIMES. The Senator from Missouri is mistaken, I think. Mr. Robert J. Walker, when he was Secretary of the Treasury, some three or four days before he left that office, the Land Department then being under his general superintendence, decided that this grant extended to the source of the river, and that was the first decision that was ever made by any of the Departments here on the subject. Upon the strength of that decision, the Government of the United States has certified to the State, or, in other words, conveyed (for that is the manner *in* which the United States adopt in conveying their lands) these lands to the State; and the State has sold to settlers and to others, I think, every foot of the lands. Now, all that this joint resolution proposes is, that the Federal Government shall confirm, or, in the language of the resolution, "relinquish" to the State those lands, and those lands only that have heretofore been certified by its own officers as belonging to the State, and which the State, placing implicit confidence in that certificate, has conveyed to third parties for a valuable consideration.

Mr. GREEN. The Senator is a little mistaken. Mr. Robert J. Walker, who was then Secretary of the Treasury before the Interior Department was created, had charge, but he took no action, except to give an opinion; and when the Department of the Interior was created, I think it was first put under Mr. Thomas Ewing, and he decided, when the ques-

tion was brought before him, against this claim. He said the grant only went to the State line.

Mr. GRIMES. Who did?

Mr. GREEN. Mr. Ewing.

Mr. GRIMES. Yes.

Mr. GREEN. And so did Mr. Stuart.

Mr. GRIMES. But Mr. Johnson, when he was Attorney General, decided that it went to the source of the river. We had conflicting opinions. Mr. Crittenden, when he was Attorney General, decided that it only went to the Raccoon Fork.

Mr. GREEN. Mr. Crittenden was right. He decided according to the law.

136 Mr. GRIMES. I think so myself; I think the grant originally never extended above the Raccoon Fork; but the grant was construed by your own authorities as extending to the source, and we acted upon it; we acted upon your decision in good faith; we received the certificates; we have conveyed the land for a valuable consideration, and now we only ask you to indemnify us for what we have done. My own individual opinion is, that the grant originally did not extend above the Raccoon Fork.

Mr. GREEN. There is no difficulty at all about this. The law is very clear. It only went to the Raccoon Fork. The Supreme Court has so decided. Attorney General Crittenden has so decided. All these, however, were nothing but opinions, except the judgment of the court; and that was on an agreed case made between the State and the Secretary of the Interior, Mr. Jacob Thompson. He was willing to stand by what Mr. Stuart did, and to say that it might go up to the northern line of Iowa, but not into Minnesota. Now, so far as the grant to those lateral roads running through it are concerned, we cannot interfere with them.

Mr. GRIMES. They have not been certified as belonging to the State under that grant.

Mr. GREEN. Yes, sir.

Mr. GRIMES. No, sir; not a foot of them, as I understand.

Mr. GREEN. Yes, sir; some of them were certified before the railroad grant was made; so that there is a conflict between claimants, even if we make this quit-claim, as it is called. Now, I am willing to go thus far: Iowa has sold lands that she had no right to; I do no' want to interfere with the private citizens; I will not interfere with public grants; but to the extent that it affects private citizens, and does not interfere with public grants, I am willing to go. I am not willing to cover all this immense tract, to grant this immense amount of land, equal to six hundred thousand acres—in addition to what they have already received up to the mouth of the Raccoon Fork.

Mr. POLK. My colleague will allow me to interrupt him. Perhaps an amendment which I propose to offer will meet his views; to insert the words:

"And by the said State sold to actual settlers."

Mr. GREEN. Say "and not interfering with any other public grant."

Mr. GRIMES. What is that amendment?

Mr. POLK. To insert:

"And by the said State sold to actual settlers."

Mr. GRIMES. If the Senator will change it so that it shall apply to any purchaser, or any grantee of the State of Iowa, it will be entirely satisfactory.

Mr. POLK. The only objection to that is, that I do not like to give this congressional bounty to land speculators.

Mr. GREEN. That is just what it is.

Mr. POLK. But to the actual settlers, I am willing to give it.

Mr. GRIMES. It would cost a great deal of trouble for us to determine who happened to be actual settlers at any particular date, or at the passage of this resolution, or whether it should apply to those who are actual settlers now, or those who were actual settlers at the time they purchased.

Mr. GREEN. All that can be guarded by saying, "any actual bona-fide settler, who, or whose grantor, actually settled on the land."

Mr. GRIMES. The man who, by virtue of your own action, the action of your own officer, went there and obtained the land, if he be not
137 an actual settler, is morally and politically, and in every way, just as much entitled to receive justice at the hands of the Senate as the man who is an actual settler. He is a bona-fide purchaser. If the Senator will insert the words, "any bona-fide purchaser from the State of Iowa," I shall be satisfied.

Mr. POLK. The objection to that is, that it would shut out the speculators.

Mr. GREEN. The only objection to that is this: That rich grant of land, the best body of land in the West, was fooled away to a New York company, who never performed the work, but have actually, by the construction of their dams, injured Missouri. They first applied to the State of Missouri to give them leave to build their dams to our bank, and we gave them leave. They then constructed them so that the overflow of water would wash right in and destroy private property, and thousands on thousands of dollars have been destroyed by the misconstruction of this work. Again: Every dam built and every lock put down, is a greater obstruction to navigation than if it had not been done. I want another condition put in; and if we do give them this land, I want the State of Iowa to remove all these obstructions, and leave the river as it was. This New York company have a speculation on hand. They want to claim that they are bona-fide purchasers; but I want actual, resident, citizen purchasers.

Mr. HARLAN. It would be unjust, in my judgment, to adopt the amendment suggested by the Senator from Missouri, (Mr. Polk.) I wish to state an important fact, which I think is misapprehended by the other Senator from Missouri, (Mr. Green.) The State of Iowa did, as he suggests, claim about twelve hundred thousand acres of land under this original Des Moines grant, lying above the Raccoon Fork of that river; but much less than one-fourth of that amount was certified to the State by the officers of the General Government. So far as this land has been certified to the State, the State has accepted the land, and attempted to apply the proceeds of the grant in the improvement of the river. A part of this land has been sold by the State directly to actual settlers. A part of the grant has been sold to the gentlemen who were applying their money in putting in locks and dams, to which reference has been made, and they in turn, have sold to other parties. Some of them, perhaps, are not improving the land; but many of them are actual settlers. The purpose of the amendment he proposes, is to cut out all those who may have bought those lands of the Des Moines River Improvement Company. That would be unjust to the company, and unjust to the purchasers from the company. All that we claim is, that the General Government shall quit-claim to Iowa the amount of lands conveyed to Iowa by the officers of the General Government, although, as alleged, wrong-

fully conveyed, or without sufficient legal ground. We do not claim one acre above the Raccoon Fork, which has not been certified to the State; and the whole amount, as I understand, is one-fourth less than is claimed by the State, and for which she derived a clear title under the original Des Moines grant.

Mr. POLK. The view I take of it is this: There is no claim in law or in equity, against the United States for the granting of this land; but I am willing that the United States should relinquish the title where an actual settler has bought the land and gone on it; but I am not willing to do that favor to persons who have bought as speculators. Where persons have bought for actual settlement, and have gone on the land, I am willing to vote to relinquish to them, and I am willing to vote for the bill with that amendment. I will offer the amendment, and
138 take the sense of the Senate upon it, to insert the words, "and by the said State sold to actual settlers, and not interfering with public grants."

Mr. DOOLITTLE. I will move an amendment to the amendment, and then I think I shall sustain it—"by the State or grantee of the State to any actual settler."

Mr. GREEN. That is the same thing. It is already implied.

Mr. DOOLITTLE. I think not. It says "sold by the State to actual settlers."

Mr. POLK. As I understand, that is to include any grantee of the State.

Mr. DOOLITTLE. Some person, may bona fide, have purchased the land from this company.

Mr. POLK. I have no objection. I will accept that amendment.

THE PRESIDING OFFICER. The amendment to the amendment is accepted; and the question will be on the amendment proposed by the senator from Missouri, as modified.

Mr. CRITTENDEN. I will suggest to gentlemen, as there is some difficulty about the provision in reference to actual settlement, to say, "all bona-fide purchasers deriving title under the State." I' seems to me that would cover everything.

Mr. GRIMES. That will be entirely satisfactory to me. It seems to me to be just to all parties. I understand it is satisfactory to the senator from Missouri.

Mr. POLK. I agree to it.

Mr. JOHNSON, of Arkansas. Mr. President, I do not care what course is taken in reference to the amendment, nor do I feel any personal interest in this matter at all. The joint resolution certainly covers a very large amount of land; and I feel it my duty to make a statement to the Senate in regard to what has transpired with reference to it. This is a very large grant of land that is now proposed to be made to the State of Iowa, and it is a pure, entire, unmixed donation. It is without any consideration at all. I forget how much it is; but it is stated at six hundred thousand acres by some. It seems to me that is more than it is; but it is a very large amount at any rate. I forget now the precise amount. This matter was considered under a law of the United States granting alternate sections for the improvement of the Des Moines River, by one of the Departments, and under the extraordinary pressure that was brought upon the Department by our friend, no longer a member of this body, (Senator Jones,) and such a pressure as scarcely any other senator could bring upon any Department of the Government, they obtained a wrong decision here which ran the grant above the Raccoon Fork for hundreds of miles. They obtained that decision, and

under it got certificates to the State of Iowa to that effect; but the subject has since been before the courts, and the courts have decided that the law makes no such grant at all. That decision of the court sustains a decision which was rendered, I believe, by a senator now here from Kentucky, (Mr. Crittenden;) and the whole of the grant itself is purely gratuitous upon our part, if the decision of the Supreme Court is at all correct.

Now, this matter here seems to be mixed up with actual settlers, with speculators, with conflicting interests under grants that we ourselves have made of railroad land. I think it had better be left without any legislation at all from us, at least in this direction; and so the Committee on Public Lands seem always to have regarded it. It never was reported back from the Committee on Public Lands until very recently; and I have no idea if I had been present in the committee at that time, that it would have been done then. I do not believe it could have been carried. I never saw the day in the Committee on Public Lands when this measure could get the sanction of that committee. I regard the whole thing as wrong, as an attempt to make us responsible for wrong acts that were brought about by the personal influence of the representatives of the State, for which it is now sought to make the Government of the United States responsible; and out of which it is attempted to create a title such as compels us to render to them the legal title.

139

Without any intention, Mr. President, to interfere with this matter any further, with no disposition to make any factious opposition to the joint resolution—for I do not care one cent which way it goes—but simply in the discharge of my duty as chairman of the committte, I state to you my conviction, for myself, and I believe the majority of the committee, that this thing is all wrong, and no part of the resolution ought to be passed at all.

THE PRESIDING OFFICER. The Secretary will read the amendment as now modified by the senator from Missouri.

The secretary read it, to insert in line nine, after the word "six" the words "and which is now held by bona-fide purchasers under the State of Iowa;" so that the resolution will read:

"That all title which the United States still retain in the tracts of land along the Des Moines River and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been heretofore certified to said State improperly, by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

The amendment was agreed to.

The joint resolution was reported to the senate as amended; and the amendment was concurred in, and ordered to be engrossed, and the resolution to be read a third time.

Mr. HUNTER. I desire to have the yeas and nays on the passage of the joint resolution.

The yeas and nays were ordered; and being taken, resulted—yeas 30, nays 7; as follows:

YEAS—Messrs. Anthony, Bigler, Bingham, Bright Chandler, Clark, Collamer, Crittenden, Dixon, Douglas, Durkee, Feesenden, Fitch, Foot, Foster, Grimes, Johnson of Tennessee, Lane, Latham, Morrill, Nicholson, Polk, Powell, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson—30.

NAYS—Messrs. Bragg, Doolittle, Green, Hunter, Johnson of Arkansas, King, and Sebastian—7.

So the joint resolution was passed.

Mr. LANE subsequently said: I rise to a privileged question. I move to reconsider the vote opon the passage of the House joint resolution quit-claiming to Iowa the Des Moines grant. I want to say to senators who feel an interest in the joint resolution, that I do it in all kindness. I have heard some suggestions, in relation to the report and the facts, that perhaps I had not very carefully examined. I examined the papers to some extent, and made up my mind that the joint resolution was right; but on hearing some suggestions, I have concluded to make this motion, that I may have an opportunity—and I shall not lose much time in doing it—to look over all the papers and facts connected with the subject.

THE PRESIDING OFFICER, (Mr. Foster in the chair.) The chair
140 will state to the senator from Oregon, that the resolution to which he refers is not in the possession of the Senate. It has been sent to the House of Representatives.

Mr. LANE. Then I believe it is competent to move that the House of Representatives be requested to return the joint resolution.

THE PRESIDING OFFICER. The usual motion is to direct the secretary to request the return of the joint resolution.

Mr. LANE. I make that motion.

THE PRESIDING OFFICER. It is moved that the secretary of the Senate be directed to request the House of Representatives to return the joint resolution indicated by the senator from Oregon.

The motion was agreed to.

EXHIBIT W.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December* 29, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *March* 18*th*, 1862.

SIR: The case of the claims of the State of Iowa under the railroad grant by act of 15th May, 1856, (U. S. Statutes at Large, vol. XI, p. 9,) so far as it traverses the Des Moines River improvement claim above the "Raccoon Folk," under the act of the 8th August, 1846, (U. S. Statutes at Large, vol IX, p. 77,) has been under examination at this office, and in order to our definite action upon the claim of the State, under said railroad act of 1856, the following is respectfully submitted for your consideration:

First. There have been selected in the odd-numbered alternate sections within the six and fifteen mile limits of the following named roads, 222,820.40 acres, viz:

For the Dubuque & Sioux City Road	77,378.06
For the Iowa Central Air Line Road	109,756.85
For the Mississippi and Missouri Road	35,685.49

These lands, with the exception of 20,124.19 acres of the 77,378.06 acres, selected for the Dubuque and Sioux City Railroad, are embraced in the odd-numbered sections which had been selected and approved to the State of Iowa, above the "Raccoon Fork," under the rulings of your predecessor.

Second. In the case of the Dubuque and Pacific Railroad Company, plaintiffs in error, vs. Edwin C. Litchfield, the Supreme court, at its December term, 1859, (23 Howard, page 66,) ruled in substance that the State under the Des Moines River improvement grant of 8th August, 1846, had no valid title to any of the lands above the Raccoon Fork.

The enclosed map indicates, by letters C, D, E, the routes of the said roads east and west, and by F and G in connection therewith,
141 the location of the Des Moines River route, traversing the roads from north to south above said fork.

Now, the first question arising is whether we shall now certify to the State of Iowa under the railroad grant of 15th May, 1856, the lands described under the first head in the foregoing, in view of the principle settled by the aforesaid decision of the Supreme court of the United States, notwithstanding there are outstanding lists in conflict therewith, certified to the State on account of the Des Moines River improvement grant under date as follows, viz:

	Acres.
List approved by Sec'y Stuart, Oct. 30, 1851, containing....	81,707.93
" " " March 10, 1852, "	143,908.37
List approved by Sec'y McClelland, Dec. 17, 1852, contain'g.	33,142.43
" " " Dec. 30, 1853, " .	12,831.51
Making a total of.....	271,572.24

By the joint resolution, approved March 2nd, 1861, (Pamphlet Laws, 2nd session, 36th Congress, page 251,) it is declared "That all the title which the United States still retain in the" tracts of land along "the Des Moines River above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress, approved August 8th, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa." And now the 2nd question arising is whether this joint resolution is designed to effect any bona-fide sales by the State of Iowa under color of the Des Moines River grant, falling within the range of the 6 or 15 mile limits of the aforesaid railroad grant, or whether it only applies to such tracts as are not within the 6 or 15 mile limits aforesaid—it appearing that there are 68,876.03 acres not included within the limits of either of the railroads, yet have been approved to the State under the river grant.

Regarding the decision of the Supreme Court as conclusive in fixing the principle restricting the Des Moines grant of 1846, on the north to the Raccoon Fork, and that consequently the railroad indemnity, as a legal right, is protected by the act of 3d August, 1854, (Statutes at Large, vol. X, p. 346,) making certified lists a conveyance, this office holds affirmatively on the point presented in the 1st question; and upon the 2nd that the joint resolution relinquishes to the Iowa Des Moines' venders only such tracts as are not required to make up the indemnity for the deficiency of the sections in place under the railroad grant of 1856.

Upon these points, however, the decision of the Secretary of the Interior is respectfully requested.

Very respectfully, your ob't servant,

J. M. EDMUNDS,
Commissioner.

Hon. C. B. SMITH,
Secretary of the Interior.

GENERAL LAND OFFICE, *April 2nd*, 1862.

Hon. JAMES HARLAN,
Ch'r Com. Public Lands, U. S. Senate :

SIR: I return herewith Senate Bill No. 119, entitled "A bill
142 confirming a land claim in the States of Iowa and Minnesota, and for other purposes," together with the letter of the Hon. Cha's Mason, refer'ed to this office with your communication of the 25th ult., for an estimate of the quantity of land embraced in said claim.

I have, therefore, the honor to state that this bill proposes to grant to the two States named the lands claimed above the Raccoon Fork for the Des Moines River improvement under that act of 8th August, 1846, and, if matured into a law, would convey a quantity of land equal to one-half of five sections in width, on each side of the Des Moines River, from the mouth of the Raccoon Fork, in Iowa, to its sourse in "Lake Sarato," Minnesota, being a distance of 266 miles, and equal to 851,200 acres, viz:

To the State of Iowa 595,200 acres, and to the State of Minnesota 256,000.

In connection with your call it becomes my duty to state—

1st. That the decision of the Supreme Court of the U. States, at December term, 1859, limits and restricts the Des Moines River improvement grant to lands below or south of the Raccoon Fork.

2nd. That the present proposed grant rests not upon the original basis or the principles of such improvement, and of railroad grants in this, that it is silent as to the reservation of the alternate sections to the United States.

3d. That the route above the fork, in Iowa, is traversed by 3 railroad routes under grant heretofore made to the State of Iowa, and it would follow that, for any lands thus or otherwise disposed of, the United States, by this bill, would give an indemnity in other lands.

4th. The route, so far as it extends into Minnesota, is traversed by a railroad route to that State, and the same remarks apply as stated under 3d head.

5th. It should be added that this office has decided that the railroad grants by act of 1856, to the State of Iowa, take the land traversed by the railroad routes over the region contemplated by the bill; but the question in that respect is pending before the Secretary of the Interior. Copy enclosed.

6th. And further that, by joint resolution approved the 2d March, 1861, the title to such tracts as may have been sold by the State of Iowa, under color of the Des Moines River improvement grant, is relinquished to the State's vendees, except so far as they may not interfere with the grant to the State for railroad purposes.

Very respectfully, your ob't servant,

J. M. EDMUNDS,
Commissioner.

Joint resolutions.—Number 19.—*Des Moines River grant.*

Joint resolution in relation to the Des Moines River grant.

Resolved by the general assembly of the State of Iowa, That our Senators in Congress be instructed, and our Representatives requested, to use their influence to procure from the proper Department at Washington an order to prevent the sale of any lands within the State of Iowa heretofore held by the Department of the Interior to have been granted to the Territory of Iowa, by act of Congress of August 8th, 1846, to aid in the improvement of the Des Moines River, until the action of Congress can be had in regard to quieting said grants, and to obtain from Congress the passage of an act or resolution granting or confirming
143 to the State of Iowa all of said river lands to the north line of the State of Iowa, to be used by the State in paying the just claims assumed by the State against the Des Moines River improvement and in building a railroad along said river: *Provided*, That no such act shall, in any manner, apply to any lands heretofore granted to the State for railroad purposes, or for any other purposes whatsoever.

Resolved, That the secretary of state shall send copies of these resolutions to each of our Senators and Representatives in Congress.

Approved April 7th, 1862.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 29*th*, 1868.

I, Orville H. Browning, Secretary of the Interior, do hereby certify that the annexed are true copies from the records of this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed the day and year above written.

[L. S.] O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 10*th*, 1862.

SIR: In answer to your communication of the 18th March last, making certain inquiries respecting the proper disposition of lands in Iowa granted to the State by act of Congress of 15th May, 1856, and by joint resolution approved March 2d, 1861—

I am of opinion that they are to be disposed of as said act and resolution direct, without any regard to the act of 8th of August, 1846, referred to in your letter.

It appears that the action of this Department in construing the last-named act has been in no respect uniform; not sufficiently so to form a precedent for its present direction; and if it had, there are now other considerations which will control its action.

The Supreme Court has decided, in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, (23 Howard, p. 66,) that the act of 8th August, 1846, did not cede any lands to the State above the Raccoon Fork, and the before-mentioned joint resolution declares that the lands above the Raccoon Fork were improperly certified as a portion of the grant of August 8th, 1846.

It follows, then, that such of these lands as are embraced in the act making the railroad grant, approved May 15th, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th August, 1846.

After completely satisfying the demands of the State embraced by that act, so much of the lands north of the mouth or Raccoon Fork as were certified under the supposed grant of August 8th, 1846, and which the State of Iowa had sold to bona-fide purchasers prior to 2d March, 1861, will be also certified to the State of Iowa.

The act of 15th May, 1856, granting lands to the State for railroad purposes, except such lands as the right of pre*sum*ption have attached thereto. This last remark is made because it affects the case of Cully, and may be others claiming pre*sum*ption on said lands.

Very respectfully, your ob't servant,

CALEB B. SMITH,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

144 *Extract of debate in U. S.* Senate *July 10th*, 1862. *Congressional Globe, part IV, 2nd sess., XXXVIIth Congress, page* 3240.

LAND CLAIM IN IOWA.

Mr. WILSON. I move to reconsider the vote by which bill of the Senate No. 119, confirming a land claim in the State of Iowa and for other purposes, was referred to the Committee on Public Lands.

The motion was agreed to.

The question then recurred on the third reading of the bill.

Mr. WILSON. If it is the pleasure of the House, I would like to say a few words in explanation of the bill.

Mr. OLIN. Oh, no; let us vote on it.

Mr. WILSON. Then I demand the previous question.

The previous question was seconded, and the main question ordered to be put; and under the operation thereof the bill was ordered to a third reading, and was accordingly read the third time.

The bill provides:

"That the grant of lands to the then Territory of Iowa for the improvement of the Des Moines River, made by the acts of August 8, 1846, is hereby extended so as to include the alternate section' (designated by odd numbers) lying within five miles of said river, between the Raccoon Fork and the northern boundary of said State; such lands are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of The Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provision of the act of the general assembly of the State of Iowa, approved March 22, 1858. And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: *Provided*, That if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act shall inure to, and be held as a trust fund for, the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

Mr. F. A. CONKLING. What is the number of acres that this bill will cede to the State of Iowa?

Mr. WILSON. It is only necessary to make a very brief statement in order to satisfy the House that this bill ought to pass. It was origin-

ally presented in the Senate by the Senator from Iowa, and referred to the Committee on Public Lands. It was then reported unanimously from that committee, with the recommendation that it do pass, and it was accordingly passed by the Senate in the shape in which it is now presented to the House.

Mr. F. A. CONKLING. Is there a report accompanying the bill?

Mr. WILSON. There is no report accompanying the bill, but I will briefly state the facts in the case. It has not only had the indorsement of the Committee on Public Lands in the Senate, but it has also had the indorsement of the Committee on Public Lands in the House. It is not proposed to enlarge what was supposed to be the grant made by Congress in 1846 to the State of Iowa, but it is simply for the purpose of obviating a difficulty which has grown out of a decision
145 of the Supreme Court in relation to the other grants made for railway purposes in that State. Notwithstanding it is the decision of the land commissioners and the opinion of Mr. Walker, the then Secretary of the Treasury, that the grant was to extend beyond Raccoon Fork to the northern boundary of the State of Iowa, yet there has been some difficulty in the matter, and this bill does not propose to grant any more land than was supposed to be embraced in the act of 1846.

Mr. RICHARDSON. Let me make a single observation in regard to this matter, as it is one with which I have some familiarity. The original grant was made by Congress for the improvement of a certain river.

Mr. F. A. CONKLING. The Des Moines River?

Mr. RICHARDSON. Yes, sir; and an application has been made that a portion of the land shall be used to aid in the construction of The Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of that State of March 22, 1858. The bill does not extend the grant, but it merely diverts the purpose for which the original grant was made in a slight degree.

Mr. WILSON. And that is all there is in it. It is designed to confirm the arrangement already made with the settlers upon the land. I hope, therefore, that the bill will pass. It has received the approval of every officer of the Government. As I have already stated, it has been indorsed by the Committee on Public Lands in this House, as well as by the committee in the Senate. I demand the previous question on the passage of the bill.

The previous question was seconded, and the main question ordered; and under the operation thereof the bill was passed.

Mr. WILSON moved to reconsider the vote by which the bill was passed, and also moved that the motion to reconsider be laid upon the table.

The latter motion was agreed to.

Joint resolutions.—Number 2.—Accepting a land grant.

JOINT RESOLUTION accepting the grant of lands made to the State of Iowa by an act of Congress, approved 13th July, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes."

Resolved by the general assembly of the State of Iowa, That the grant of lands made by the act of Congress, approved July 13th, 1862, entitled "An act confirming a land claim in the State of Iowa and for other purposes," be, and the same is hereby, accepted by the State of Iowa, on the terms and conditions in said act contained.

Approved September 11th, 1862.

EXHIBIT X.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 29th*, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOS. S. WILSON,
Commissioner of the General Land Office.

146 No. 1.—*Special certificate.*

Whereas the act of Congress approved the 12th July, 1862, entitled "An act confirming a land grant to the State of Iowa and for other purposes," grants to the State of Iowa the alternate odd-numbered sections "in place" and undisposed of, lying within five miles of the Des Moines River, between the Raccoon Fork and the northern boundary of said State; and whereas said act provides that if any of said lands shall have been sold or otherwise disposed of by the United States, before the passage of said act, excepting those released to the grantees of the State of Iowa, under the joint resolution of March 2nd, 1861, the Secretary of the Interior shall set apart an amount of lands within said State to be certified in lieu thereof; and whereas it appears in the preliminary adjustment of said grant, that the United States had sold and otherwise disposed of, a certain quantity of land, prior to the passage of said act, for which the said State is entitled to indemnity under the act aforesaid: Therefore, this is to certify that, upon the presentation of this paper to any of the land offices in the State of Iowa, accompanied by written authority from the governor authorizing the party presenting the same as State agent to make indemnity selections under said act, it shall and may be lawful for the register and receiver to receive lists of such indemnity selections from such agent; which list must be verified by the signature of the said agent, attested by the register & receiver, and be accompanied by their certificate that the lands so selected are vacant public lands, subject to entry at private sale at $1 25 per acre; the aggregate of such selections to be restricted to three hundred thousand acres, (as approximate to the actual quantity, to be reduced or increased according to the result of a final adjustment;) and no selection to be made unless of tracts in compact form, not less than a quarter section, unless where a fraction of less quantity is selected, and taken as equivalent to 160 acres.

Upon such selections being filed and verified as indicated, and attached to this special certificate, the register & receiver are required to make entries accordingly on the plats and records of their office, and make monthly abstract returns to this office of such selections, separate from the ordinary monthly returns. When the aggregate authorized by this certificate shall have been selected, this certificate with the verified lists must be returned to this office.

Given under my hand and the seal of this office at the city of Washington, this 25th day of April, A. D. 1863.

[L. S.]

J. M. EDMUNDS,
Commissioner of General Land Office.

NOTE.—Let the selections be made in tabular form, according to accompanying form A.

147 *Statement showing the aggregate of lands sold and otherwise appropriated, in the odd numbered sections, within the limits of the Des Moines River grant, from the Raccoon Fork to the State line; and also the vacant lands enuring to the grant.*

State of Iowa.	Lands sold.	Lands taken by pre-emption claimants that settled prior to the 12th of July, 1862.	Lands selected under act of May 15, 1856, for railroad.		Lands selected under swamp act 1850.	Lands selected under act of June 20, 1840, for universities.	Lands selected under act of 1846, for river grant.	Vacant and unappropriated land enuring to the river grant of 1862.	Selected railroad lands.
			Six-mile limits.	Fifteen-mile limits.					
F't Des Moines.									6 *mile-limits.*
Dist. p. 1	4,907.86	.....	5,225.19	457.07					5,225.19
" 2	5,782.47	.....	6,846.59	2,908.49					6,846.59
" 3	5,387.02	.....	.....	9,456.93	.....	709.84			3,251.30
" 4	277.39	.....	.....	14,227.09	.....	318.49	4,442.78		43,647.43
" 5	2,580.53	.....	.....	7,624.93	.....	.....	7,927.04		4,749.75
" 6	1,330.76	.....	3,251.30	18,139.86	.....	1,303.92			21,310.07
" 7	1,305.09	.....	43,647.43	6,125.88					25,660.61
" 8	.....	.....	.....	14,060.62					4,752.90
	21,571.12								115,443.84
F't Dodge.									
Dist. p. 8	.....	.....	.....	11,390.96	.....	.....	9,858.74		15 *mile-limits.*
" 9	.....	.....	4,749.75	10,409.71	.....	.....	21,484.38		457.07
" 10	160.00	160.00	21,310.07	1,706.93	.....	.....	2,880.44		2,908.49
" 11	159.60	560.00	25,660.61	5,956.70	.....	.....	2,070.87		9,456.93
" 12	.....	.....	4,752.90	5,028.51	.....	.....	.....	71.13	14,227.09
" 13	120.00	2,140.61	.....	6,722.55	795.50	.....	9,571.43	11,546.90	7,624.93
" 14	164.10	3,835.68	.....	.....	730.04	.....	581.62	10,142.42	18,139.86
" 15	.....	3,306.32	.....	1,296.68	2,395.18	.....	.....	7,869.60	6,125.88
" 16	4,230.37	118.28	.....	2,496.19	3,830.95	.....	.....	4,305.54	14,060.62
" 17	2,713.36	160.00	.....	.....	4,018.19	.....	.....	4,464.09	11,390.96
" 18	6,440.00	373.28	.....	.....	1,307.29	.....	.....	3,503.60	10,409.77
" 19	800.52	.....	.....	.....	3,280.67	.....	.....	13,569.08	1,706.93
" 20	1,080.00	160.00	.....	.....	2,641.29	.....	.....	10,102.75	5,956.70
" 21	3,037.50	.....	.....	.....	4,472.01	.....	.....	3,387.91	5,028.51
Part in S. City district.									6,722.55
p. 23	479.80	.....	.....	.....	4,195.55	.....	.....	8,311.61	1,296.68
" 23	2,857.13	146.13	.....	.....	1,613.60	.....	.....	7,339.81	2,496.19
" 24	1,360.00	240.00	.....	.....	2,458.97	.....	.....	9,817.00	
" 25	560.00	80.00	.....	.....	2,123.55	.....	.....	9,168.69	118,009.16
" 26	1,155.70	515.10	.....	.....	1,080.00	.....	.....	23,780.67	
" 27	1,718.90	2,238.77	.....	.....	.....	.....	.....	27,387.63	*Recapitulation.*
" 28	.....	360.00	.....	.....	.....	.....	.....	10,065.12	44,348.60
	49,008.50	13,993.77	115,443.84	118,009.16	34,942.79	2,332.25	58,817.30	165,373.55	13,993.77
	44,659.90	.....	118,009.16	.....	.....	.....	.....	*4,659.90	233,453.00
									34,942.79
	44,348.60	.....	233,452.00	.....	.....	.....	.....	170,033.45	2,332.25
								†80.00	
									‡329,070.41
								170,113.45	58,817.30
									170,113.45
									§558,001.16

*The quantity taken from item of lands sold. †Added from pre-emption lands. ‡Indemnity. §Whole area.

EXHIBIT Y.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Dec.* 29, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

I' testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOS. S. WILSON,
Commissioner of the General Land Office.

148 STATE OF IOWA, EXECUTIVE DEPARTMENT,
Des Moines, July 26, 1866.

Hon. J. M. EDMUNDS,
Com. Gen. Land Office, Washington, D. C.

SIR: In reply to your communication of the 19th instant, I have the honor, by direction of the governor, to re-enclose to you the report of settlement between Hon. Josiah A. Harvey and the United States, on Des Moines River and other lands, with the approval of the census board of this State, attested by the great seal of the State.

Very respectfully, yours,

GEO. J. NORTH,
Private Secretary.

WASHINGTON CITY, D. C., *May 23d*, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79 of the acts of the 11th general assembly, I have the honor to report:

That I have consummated an adjustment with the United States of the excess of lands received by the State under the grant of Sept. 4, 1841. Also, the lands confirmed to the State by the joint resolution of March 2d, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State, in this settlement, is credited with the whole amount of land in odd sections, and lying within five miles of the Des Moines River from the Raccoon Fork to the northern boundary of the State, determined (by the Department) to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to wit:

1st. Indemnity land selected under special certificate, dated April 25th, 1863	297,603.74 acres.
2d. Remaining lands in place yet to be certified	167,109.02 acres.
3d. Lands in place confirmed by the joint resolution of March 2d, 1861	44,838.64 acres.
4th. Lands selected and heretofore certified on the east fork of the Des Moines River, and more than five miles from the western or main branch	11,661.80 acres.
5th. The excess selected and approved to *to* the State as a part of the 500,000-acre grant under the act of Sept. 4, 1841	35,473.54 acres.
Making in all	556,686.74 acres.
And leaving due the State to balance the whole amount the grant	1,317.32 acres.

For this a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines River heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the Department,

under the decision of the attorney general, to be a proper and legitimate offset to so much of this grant. Hence they are charged to the State in this settlement.

149 The 35,473.54 acres charged as excess, under the 500,000-acre grant, (act 1841,) includes the 22,660.03 acres over and above the 500,000 acres which is embrac'd in the book of diagrams, approved and certified to the State on the 12th of September, 1854, and which has hitherto been considered "the excess," and also the 12,813.51 acres, which were once approved as a part of the 500,000-acre grant, and afterwards rejected and approved and certified as a part of the Des Moines River grant. These lands have been known as the "river school-lands."

Notwithstanding that they have been disposed of by the State as a part of the Des Moines River lands, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,475.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the Department had determined.

The proper and necessary lists, according to the terms of this adjustment, will be made and approved by the secretary, and delivered to me or sent to the State.

In the preparation of these lists all lands which appear at the General Land Office as having been selected as swamp, under act of Sept. 28, 1850, and all tracts to which pre-emption rights had attached prior to July 12, 1862, will be excluded. If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of Sept. 28, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the Government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which, I think, is fair and just, and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines River grant, as well as of the act of 1841, except as far as valid and legal subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant (35,475.54 acres) thus deducted is, by an agreement between the State and The Des Moines Valley Railroad Company, (the beneficiary of the grant,) to be credited to said company at the rate of one dollar and twenty-five cents per acre, in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should, therefore, be credited on the claims they are under obligations to satisfy, with the sum of $44,341 67.

My authority extends only to settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, for me to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior (a copy of which accompany Mr. Kilbourn's report, made last winter, is herewith transmitted for your examination, in connection with this adjustment) is the result of their efforts.

The labors of these agents, (Messrs. Kilbourn and Mason,) heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope, therefore, that this entire agreement will meet your approbation, and that you will, as I think you have a right, and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted.

J. A. HARVEY,
Commissioner.

Adjustment of the Iowa Des Moines River grant, under the act of July 12th, 1862, and "joint resolution" of March, 2d, 1861

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25th, 1863	297,603.74
The lands in place to be certified	167,109.02
The lands in place confirmed by "joint resolution" of March 2d, 1861	44,838.64
The quantity selected on the east fork of Des Moines River and certified to the State under the original law of August 8th, 1846	11,661.80
The excess selected and approved to the State under the 500,000 grant of 1841	35,473.54
	556,686.74
Remaining indemnity due to the State	1,317.32
	558,004.06

CREDIT.

	Acres.
The State of Iowa with the whole area of the grant above the Raccoon Fork	558,004.06
	558,004.06

J. M. EDMUNDS,
Commissioner General Land Office.

GENERAL LAND OFFICE, *May 21st*, 1866.

WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30th, 1866, "for the adjustment of certain land claims with the General Government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State, as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office,
and Commissioner on behalf of the State of Iowa.

151 STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa.

[L. S.]

W. M. STONE, *Governor.*
JA'S WRIGHT, *Sec. of State.*
JOHN A. ELLIOTT, *A'd't'r.*
W. H. HOLMES, *Treasurer.*
} *Census Board.*

JUNE 20TH, 1866.

DEPARTMENT INTERIOR, *May 22d*, 1866.

The adjustment, as herein stated, is hereby approved.

JA'S HARLAN,
Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Dec.* 29, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOS. S. WILSON,
Commissioner of the General Land Office.

WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30th, 1866, "for the adjustment of certain land claims with the General Government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office,
and Commissioner on behalf of the State of Iowa.

DEPARTMENT OF THE INTERIOR, *May 22d*, 1866.

The adjustment, as herein stated, is hereby approved.

JA'S HARLAN,
Secretary.

Adjustment of the Iowa Des Moines River grant, under the act of July 12th, 1862, and "joint resolution" of March 2d, 1861.

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25th, 1863	297,603.74
The lands in place to be certified	167,109.02
The lands in place confirmed by "joint resolution" of March 2d, 1861	44,838.64
The quantity selected on the east fork of Des Moines River and certified to the State under the original law of August 8th, 1846	11,661.80

152	The excess selected and approved to the State under the 500,000 grant of 1841	35,473.54
		556,686.74
	Remaining indemnity due to the State	1,317.32
		558,004.06

CREDIT.

	Acres.
The State of Iowa, with the whole area of the grant above the Raccoon Fork	558,004.06
	558,004.06

J. M. EDMUNDS,
Commissioner General Land Office.

GENERAL LAND OFFICE, *May 21st*, 1866.

The item in the annexed adjustment of 35,473.54 acres, being excess selections under the 500,000-acre grant to the State of Iowa, approved to said State, Feb. 20th, 1851, includes 12,813.57 acres, described as follows, viz:

Parts of section.	Sec.	Town.	R'ge.	Acres.
W. h'f of S. W. qr	5	87	26	80.00
All of	7	87	26	597.92
N. h'f of sec	9	87	26	320.00
S. h'f of sec	15	87	26	320.00
All of	19	87	26	609.18
N. h'f of sec	21	87	26	320.00
W. h'f of sec	23	87	26	320.00
N. W. q'r	27	87	26	160.00
W. h'f of E. h'f, and E. h'f of W. h'f	29	87	26	320.00
All of	31	87	26	605.92
N. h'f of N. W. q'r, and lots 1, 2, 3, 4	1	86	27	241.56
S. h'f of sec	11	86	27	320.00
W. h'f of S. E. q'r, and S. W. q'r	1	87	27	240.00
N. E. q'r	7	87	27	160.00
N. h'f of sec	9	87	27	320.00
E. h'f of sec	11	87	27	320.00
All of	13	87	27	640.00
Lots 3 and 4	15	87	27	113.90
All of	19	87	27	618.40
N. E. q'r, and N. E. q'r of N. W q'r	23	87	27	200.00
Lots 4, 5, 6, 7, 8, and E. h'f of S. E. q'r	23	87	27	275.50
All of	25	87	27	604.25
W. h'f of sec	27	87	27	320.00
All of	29	87	27	640.00
All of	31	87	27	626.44
E. h'f of sec	33	87	27	320.00
W. h'f of N. E. q'r; S. E. q'r, and E. h'f of N. W. q'r	31	88	27	320.00
S. E. q'r	3	87	28	160.00
N. E. q'r	11	87	28	160.00
E. h'f of S. E. q'r; N. W. q'r of S. E. q'r, & lots 1, 2, 3	5	88	28	252.44
W. fr. h'f of sec., and N. E. q'r	7	88	28	468.00
E. h'f of sec., and N. h'f of N. W. q'r	11	88	28	400.00
S. W. q'r	13	88	28	160.00
W. h'f of S. W. q'r	17	88	28	80.00
E. h'f of N. E. q'r	19	88	28	80.00
S. h'f of sec	21	88	28	320.00
E. h'f of sec	25	88	28	320.00
N. h'f of sec., and S. E. q'r	33	88	28	480.00
Total				12,813.51

Subsequent to said approval the said lands were deducted

153 from the list as improper selections because found in conflict with the river grant of 1846.

The above action of the Department, rejecting the above 12,813. 51 acres from the original lists, was disapproved by the Secretary of the Interior under date of February 28, 1865, hence, and in view of the annexed adjustment, covering the whole amount of excess selected and approved in 1851, the title to said above-described lands is affirmed as enuring to the State of Iowa from the 20th February, 1851.

GENERAL LAND OFFICE, *May* 28, 1866.

The above is respectfully submitted to the Hon. Secretary of the interior for his approval.

J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *May* 22*d*, 1869.

Approved:

JA'S HARLAN,
Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December* 29*th*, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exempli'cation of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JO'S S. WILSON,
Commissioner of the General Land Office.

WASHINGTON, *Dec.* 1*st*, 1866.

Hon. JOSEPH S. WILSON,
Com'r Gen'l Land Office.

SIR: In reference to the final adjustment of the Iowa Des Moines River grant under the act of July 12th, 1862, (Stat. vol. XII p. 543,) and joint resolution of 2d March, 1861, with J. A. Harvey, esq., commissioner, on the part of the State, approved by the Secretary of the Interior, May 22, 1866, as follows, to wit:

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25th, 1863	297, 603. 74
The lands in place to be certified	167, 109. 02
The lands in place confirmed by "joint resolution" of March 2d, 1861	44, 838. 64
The quantity selected on the east fork of Des Moines River and certified to the State under the original law of August 8th, 1846	11, 661. 80
The excess selected and approved to the State, under the 500,000 grant of 1841	35, 473. 54
	556, 686. 74
Remaining indemnity due to the State	1, 317. 32
	558, 004. 06

154 CREDIT.

	Acres.
The State of Iowa with the whole area of the grant above the Raccoon Fork	558,004.06
	558,004.06

I respectfully ask to be informed whether or not the lists of lands certified to the State in pursuance of said adjustment, include the lands to be held in trust for lands previously taken by the railroad grants of 1856, or otherwise disposed of within the limits of the old river lists, improperly approved under act of 8th August, 1846, as provided by the act of 12th July, 1862.

I hold a deed from The Dubuque and Sioux City Railroad Company for the N. h'f and S. W. q'r sec. 5, T. 87, range 27; and lots 2 and 3, and N. E. q'r of N. E. q'r of sec. 1, T. 87, range 28, approved to the road within the old river claim, and the information now asked. as the approved lists are silent on this point, has an important bearing upon the validity of my title.

I am, with great respect, your ob't serv't,

W'M T. STEIGER.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Dec. 4th*, 1866.

SIR: In reply to your inquiry of the 1st inst., I have to state that the lists of lands, approved June 14th, 1866, to the State of Iowa under the Des Moines River grant of 12th of July, 1852, and "joint resolution" of March 2d, 1862, include therein the lands to be held in trust, as provided by said act.

Very respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

W'M T. STEIGER, Esq., *Present.*

Supreme Court of the United States. No. 303. Samuel G. Wolcott, plaintiff in error, vs. The Des Moines Navigation and Railroad Company, in error to the circuit court of the United States for the southern dist. of New York.

EXHIBIT 41.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Samuel G. Wolcott, plaintiff, and The Des Moines Navigation and Railroad Co., defendants, a manifest error hath happened, to the great damage of the said Samuel G. Walcott, plaintiff, as is said, and as appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if
155 judgment be therein given, that then, under your seal, distinctly and openly, you send the same and proceedings aforesaid, with

all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 21st day of February, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

SAMUEL G. WOLCOTT
vs.
THE MOINES NAVIGATION AND RAILROAD COMPANY.

By virtue of the within writ of error, and in obedience thereto I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, do hereby certify and return the judgment and proceedings in the case in the writ within mentioned, and the following pages, numbered from one to 34, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the above-entitled case, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 22d day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Allowed Nov. 13, 1865.

CHA'S L. BENEDICT.

Filed Nov. 13, 1865.

Pleas in the circuit court of the United States for the southern district of New York, held at the United States circuit court-rooms, in the city of New York, in said district, of the term of April, in the year of our Lord one thousand eight hundred and sixty-five. Witness the Honorable Samuel Nelson, justice of the Supreme Court of the United States.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Des Moines Navigation and Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, were summoned to answer Samuel
156 G. Wolcott, a citizen of said State of New York, of a plea of breach of covenent; and thereupon the said Samuel G. Wolcott, plaintiff, by Jasper W. Gilbert, his attorney, complains of the said The Des Moines Navigation and Railroad Company, defendants, of a plea of breach of covenant, for that, whereas, heretofore, to wit, on the eighth

day of August, in the year of our Lord one thousand eight hundred and fifty-nine, at Des Moines, in the said State of Iowa, to wit, at the city of New York, in the said southern district of New York, by a certain deed-poll then and there made by the said defendants, which said deed-poll, sealed with the seal of the said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed that the said defendants, in consideration of the sum of three thousand and forty dollars, to them in hand paid by the said plaintiffs, did thereby grant and convey to the said plaintiff the following tract of land in said State of Iowa, to wit, in Webster County: The east half of section seventeen, in township eighty-eight, range twenty-seven, containing three hundred and twenty acres; and the said defendant, in and by the said deed-poll then and there, in consideration of the moneys aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the said plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take a good and perfect title in fee to the said tract of land, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tract of land, nor any part thereof, and that the said plaintiff did not then or there, or at any time afterwards, by reason of the said deed-poll, or otherwise, receive, obtain, or take any title whatsoever to the said tract of land, or any part thereof, but that the said defendants, to fulfil their said warranty of the title to said land, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected and refused, and still do neglect and refuse, of all which the said defendants had notice, and so the said plaintiff in fact saith that the said defendants, although often requested, &c., have not kept the said covenants so by them made as aforesaid, but have broken the same, to the damage of said plaintiff of ten thousand dollars, and thereof the said plaintiff brings his suit, &c.

And the said defendants, by W. & C. Tracy & Tallmadge, their attorneys, come and defend the wrong and injury, when, &c.; and as to the supposed breach of covenant above assigned and alleged by the said plaintiff, they, the said defendants, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, the said defendants, because, they say, that they, the said defendants, before and at the time of the making of the said indenture in the said plaintiff's declaration above-mentioned, were seized in fee of the said tract of land, and did then and there by the said indenture convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c. And for a further plea in this behalf the said defendants, by leave of the court here for the purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because, they say, that the said defend-
157 ants, after the making of the said indenture in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tract of land, which said last-men-

tioned title and estate, by the common law of the State of Iowa, and also by the statute of the said State of Iowa, did forthwith enure to and vest in the said plaintiff as the grantee of the said defendants by the said indenture, and that by means of the premises the said plaintiff, before the commencement of this suit, did receive and take a good and perfect title in fee to the said tract of land, of all which the said plaintiff had notice; without this, that the said plaintiff has suffered any damage by means of anything in the said declaration mentioned, and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action, because, he says, that the said defendants at the said time, when, &c., were not seized in fee of the said tract of land, nor did they convey to the said plaintiff any title thereto in manner and form as in that plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said defendants do the like.

And the said plaintiff, by his attorney aforesaid, and to the said plea of the said defendants by them secondly above pleaded, says that he, the said plaintiff, ought not, by reason of anyth'ng in that plea alleged, to be barred from having or maintaining his aforesaid action thereof, because, he says, that the said defendants did not, at the said time, when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatsoever in manner and form as in that plea alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said defendants do the like.

Therefore, it is ordered that the issue above joined be tried at the next term of the said circuit court, to be held at the court-rooms in said district above mentioned, commencing on the third Monday of October next; the same day as given to the parties aforesaid.

Afterwards, to wit, on the 27th day of October, in the term of October, in the year of our Lord one thousand eight hundred and sixty-five, in the said circuit court, at the court-room thereof, in the city of New York, in said southern district of New York, before the Honorable Samuel Nelson, a justice of the Supreme Court of the United States, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury being summoned also come, who to speak the truth of the matters aforesaid in issue being chosen, tried, and sworn, say upon their oaths that the defence by the said defendants above pleaded is true, and they find and return a general verdict in favor of the defendants aforesaid.

"Therefore it is considered by the court here that the said plaintiff take nothing by his said action, but that he be in mercy, &c., and that the said defendants go thereof without day, &c.; and it is further considered, that the said defendants recover against the said plaintiff the sum of twenty-seven dollars and thirty cents for their costs and
158 charges in and about their defence in this behalf expended, and that the said defendants have execution thereof."

Judgment signed this 31st day of October, A. D. 1865.

R. E. STILWELL,
Deputy Clerk.

Indorsed: U. S. circuit court for the southern district of New York. The Des Moines Navigation and Railroad Company ads. Samuel G. Wolcott. Judgment-roll. W. & C. Tracy & Tallmadge, defendants' attorneys. Filed October 31st, 1865.

Bill of exceptions.

U. S. circuit court, southern district of New York.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company.

This action, being at issue upon the declaration, pleas, and replications, was brought to trial and tried at a term of this court held at the city of New York, in the southern district of New York, before the Honorable Samuel Nelson, a justice of the Supreme Court of the United States, held in October, 1865, and the same was tried with a jury.

The plaintiff's counsel, to maintain the issue on his part, gave evidence that the plaintiff is a citizen of the State of New York, and a resident thereof, and was so at and before the commencement of this suit, and that the defendants are a corporation formed and existing by and under the laws of the State of Iowa, and residing in the State of Iowa, and that the defendants executed to the plaintiff a certain deed, which deed was produced and given in evidence, being as follows:

For and in consideration of three thousand and forty dollars, The Des Moines Navigation and Railroad Company (a corporation organized under the laws of the State of Iowa) doth hereby grant and convey to Samuel G. Wolcott, of Utica, State of New York, the following tracts of land in the State of Iowa, to wit, in Webster County, the east half of section seventeen, in township eighty-eight, range twenty-seven, containing three hundred and twenty acres; and the said Des Moines Navigation and Railroad Company doth hereby warrant the title against all persons whomsoever.

In witness whereof Edwin C. Litchfield, president, and N. F. Higbie, treasurer of said company, having been hereunto duly authorized, have hereunto set their hands and affixed the seal of said company this first day of August, in the year one thousand eight hundred and fifty-nine.

[SEAL.] EDWIN C. LITCHFIELD, *President.*
N. T. HIGBIE, *Treasurer.*

The said deed bore the usual certificate of the due acknowledgment and proof thereof, under the hand and seal of a commissioner for Iowa, on the 19th day of August, 1859.

The plaintiffs claimed to recover the amount of the consideration-money mentioned in said deed, with interest, and thereupon rested his case.

159 The defendants' counsel, to maintain the issue on their part, gave in evidence the following matters, namely:

On the 8th August, 1846, the Congress of the United States passed an act of which the following is a copy:

An act granting certain lands in the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so-called) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SECTION 2. *And be it further enacted*, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress—that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sale shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SECTION 3. *And be it further enacted*, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States or person in their service passing through or along the same: *Provided always*, That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than for the time being shall be the minimum price for other public lands.

SECTION 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and for no other: *Provided*, The legislature of the State of Iowa shall accept the said grant for the said purpose.

Approved August 8th, 1846.

The said grant was fully accepted by the State of Iowa for the purpose contemplated in said act, and everything was done on the part of the State necessary to perfect its title under the act.

Agents were afterwards duly appointed by the governor of the State, who selected the sections designated by the odd numbers throughout the whole extent of the grant. (The selections thus made embraced all of the sections of the public lands designated by odd numbers then remaining unsold and not otherwise disposed of, incumbered, or appropriated, lying and being in said Territory or State of Iowa, within
160 a strip of five miles in width on each side of said river Des Moines from its mouth to its source at or above the northern boundary of the State.) The selection by odd numbers was approved by the Secretary of the Treasury of the United States.

The lands mentioned in the declaration in this suit are a part of the

lands thus selected and approved. They are within the limits of what was the Territory of Iowa, on the 8th day of August, 1846, and are within five miles of the Des Moines River, but they are situated above the Raccoon Fork of said river, and are not between said Raccoon Fork and the mouth of said river.

On the 24th of February, 1847, the general assembly of the State of Iowa provided for the election of a board of public works, consisting of a president, secretary, and treasurer. To this board the whole subject of receiving and managing the lands and providing for the construction of the improvement was committed. On the (2d) second of August, (1847,) eighteen hundred and forty-seven, the board was duly elected, and was fully organized and went into operation on the (22d) twenty-second of September following. On the (23d) twenty-third of February, (1848,) eighteen hundred and forty-eight, the Commissioner of the General Land Office wrote to the board of public works, as follows:

GENERAL LAND OFFICE, *February 23d*, 1848.

SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received, and would have received an earlier response, but for the erroneous and defective surveys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that river, under the act of the 8th of August, 1846. As these surveys have been corrected, action will be had on these selections as soon as possible, and when approved they will be certified to you.

It is not *un*usual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned; and these will, of course, be transmitted as they can be prepared.

All the aid that this office can give the board of public works in the discharge of its duties will be cheerfully rendered, and if it is possible to procure copies of the reports of the Topographical Bureau of the examination heretofore made of the Des Moines River, it will afford me pleasure to do so, and forward them to you.

A question has arisen as to the extent of the grant made to Iowa by the act of the 8th of August, 1846, and the opinion of this office has been requested on that point.

By the terms of the law the grant is of an equal moiety in alternate sections of the public lands remaining unsold and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of the river, to be selected within said Territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

CHARLES CORKERY, Esq.,
Secretary of Board of Public Works, Fairfield, Iowa.

161 On the (19) nineteenth of June, (1848,) eighteen hundred and forty-eight, without any notice of a change of opinion, a procla-

mation was issued, signed by the President and countersigned by the Commissioner of the General Land Office, ordering into the market some of the lands which lay above the Raccoon Fork, and which would belong to the State according to the rule laid down in the aforesaid letter of the (23) twenty-third of February, (1848,) eighteen hundred and forty-eight. The sale was to take place on the (16) sixteenth of October, 1848.

On the (18) eighteenth of September, (1848,) eighteen hundred and forty-eight, the board of public works, through its secretary, wrote to the Commissioner of the General Land Office as follows:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, September 18th, 1848.

SIR: The attention of this office has been called to the proclamation of the President of the United States, bearing date the 19th of June last, for the sale of lands in Iowa, by which I perceive that lands donated to this State for the improvement of the Des Moines River are to be offered for sale at Iowa City, on Monday, the 16th of October next. These lands are situated above the Raccoon Fork of the Des Moines River, in township Nos. 79, 80, range Nos. 25, 26, &c., and a sale by the United States will be in conflict with your opinion expressed to me in your letter of the 23d of February last, in which you say that "The State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa."

Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be greatly embarrassed by any impediments to her favorable prospects in this regard. We believe that the fact of having those lands embraced in the proclamation was an oversight, without any intention to curtail the resources of the State and that it will be corrected on being discovered.

Very respectfully your obedient servant,

CHARLES CORKERY.

Hon. R. M. YOUNG,
Commissioner G. L. O.

To this letter no reply was returned. On the same day the following protest was sent to the land office at which the sale wae ordered to take place, for the purpose of being filed therein:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, September 18th, 1848.

SIR: I enclose you a copy of a letter which I have transmitted by this day's mail to the Commissioner of the General Land Office, and take this opportunity of protesting against the sale of the lands therein referred to.

This protest is based not only on the act of Congress donating lands to the State of Iowa for the improvement of the Des Moines River, but also on the decision of the Commissioner of the General Land Office, bearing date the 23rd of February, 1848, in words as follows: "A question has arisen as to the extent of the grant made to Iowa by the act of the 8th of August, 1846, and the opinion of this office has been requested on that point. By the terms of the law the grant is of one equal
162 moiety, in alternate sections, of the public lands remaining unsold and not otherwise disposed of, incumbered, or appropriated, in a

strip five miles in width on each side of the said river, to be selected within said Territory, &c., and the proceeds are to be applied in the improvement of the navigation of said river, from its mouth to the Raccoon Fork. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa."

As this board has had no information that this opinion has been rescinded, we are of opinion that he will inform you on the subject within the two weeks prescribed for the continuance of the sale.

Respectfully,

CHARLES CORKERY,
Sec'y B. P. W.

C. NEELY, Esq., *Register.*

The following letter was written by the Senators and Representatives of Iowa on the day of its date:

CONGRESS, *January 8th*, 1849.

SIR: During the last summer we were much surprised to see lands proclaimed for sale by the President of the United States, which had been declared by the General Land Office, and considered by the people of Iowa, as the property of that State, under the act of the 8th of August, 1846, "granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory.

On inquiring of the Commissioner of the General Land Office as to the reasons for this course, he informed us that he had changed his original opinion as to the extent of this grant, and was now inclined to think that it was limited to the Raccoon Fork; but no official promulgation of this opinion has yet been given, except negatively by proclaiming the lands as above mentioned.

The granting clause in the act of August 8th, 1846, is so clear that we are constrained, by a due regard to the interests of the people and State of Iowa, to ask your consideration of the subject; and we are further encouraged to take this course, as the Commissioner, we are assured, will be pleased to extend to the State the full complement of the grant, if the law, in your opinion, should bear that construction. This act of August, 1846, is found in the acts of the first session, 29th Congress, page 115.

The first part of the first section designates the object for which the grant was made, to wit: "There shall be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding the said Territory to improve the navigation of the Des Moines River, from its mouth to the Raccoon Fork, (so called,) in said Territory."

The next clause describes the grant and its extent, to wit: "One equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of the river."

This language is so plain that the extent of the grant is a self-evident proposition, and requires no argument. But the idea is entertained that the improvement governs the extent of the grant. This construction, we beg leave to state, has never obtained. Grants have frequently been made for seats of government, county sites, and the erection of public buildings, but in no case has it been contended that the object of the grant governs the extent of it; otherwise the act passed by Con-
163 gress on the same day with that now in consideration, (page 140,) "to grant a certain quantity of land to aid in the improvement of

the Fox and Wisconsin Rivers, and to connect the same by a canal in the Territory of Wisconsin," must be construed as running the whole length of the Wisconsin River also, as the limitation of that grant to the Fox River, the lakes through which it passes, and the canal, is not more specific than the terms used to designate the grant for the improvement of the Des Moines River.

The reason for this extension of the grant to Iowa above the terminus of the improvement is, moreover, manifest, because, near the mouth of the river, that improvement will be very expensive; and there the grant does not attach, because the lands on the Missouri side of the river, below Sullivan's line are in Missouri, and those on the Iowa side are the property of individuals; and further, most of the lands some distance up the Des Moines have been sold by the Government, and, as the grant is only of the unsold and unappropriated lands in the alternate sections, the only equivalent for those which had been sold that could be given are the vacant lands far in the interior from the Mississippi; and hence the terms used in the law.

As the terms of the act then, are so clear and explicit, and as the reasons for the extension of the grant as provided by that act are so obvious, we respectfully request in our own behalf, and in behalf of the State and her citizens, who look with that confidence heretofore so fully justified that you will not withhold the munificence of Congress, and thus cripple this young and rising State in her first great enterprise, and thus involve her in inextricable debt and difficulty. We earnestly request that you will give the necessary instructions for the selection and approval of these lands along the entire route of the Des Moines, as contemplated by the law, as fast as the surveys are made and returned, and that the lands which belong to the State, which had been inadvertently offered, and which remain unsold, may be withdrawn from the market, and certified to the State also.

We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEORGE W. JONES.
SHEPHERD LEFFLER.
W'M THOMPSON.

Hon. R. J. WALKER,
Secretary of the Treasury.

The following was the response of the Secretary:

TREASURY DEPARTMENT, *March 2d*, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress, "granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," approved 8th August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, &c.,

R. J. WALKER, *Sec. of Treasury.*

Messrs. A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON.

164 On the same day the Secretary transmitted a copy of the above letter to the Commissioner of the General Land Office, with the following order:

TREASURY DEPARTMENT, *March* 2, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date to members in both Houses of Congress from the State of Iowa, with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter, to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER.

R. M. YOUNG, *Commissioner.*

On the 1st of June, (1849,) eighteen hundred and forty-nine, the Commissioner of the General Land Office wrote as follows to the land office at Iowa City:

GENERAL LAND OFFICE, *June* 1, 1849.

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Fork, as this office had previously decided, you are hereby directed to withhold from sale all lands situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Fork. Enclosed I send you a diagram, upon which the State selections above that point are colored yellow.

I have also to request that you will make out a list showing the sales and locations which have been made within these selections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them. The diagram extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

R. M. YOUNG, *Commissioner.*

REGISTER AND RECEIVER,
Iowa City, Iowa.

The reply to said letter was received at the General Land Office, in Washington, where it has since remained on file, as follows:

LAND OFFICE, *Iowa City, June 16th,* 1849.

SIR: Your letter of 1st inst., directing us to withhold from sale the odd sections above the Raccoon Fork of the Des Moines River, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed in your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servant,

JESSE BOWEN, *Register.*
EATON MORRIS, *Receiver.*

Hon. the COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington City, D. C.

165 The foregoing letter was filed and endorsed as follows: Ac-

knowledges the receipt of Commissioner's letter of the 1st inst., directing the odd sections above the Raccoon Fork of the Des Moines River to be withheld from sale.

On the nineteenth of December, 1849, the following letter was written by the Commissioner of the General Land Office to Jesse Williams, esq., the then secretary of the board of public works:

GENERAL LAND OFFICE, *December 19th*, 1849.

SIR: A letter has been received at this office from the Hon. A. C. Dodge and the Hon. Geo. W. Jones, enclosing one from you to the former, dated the 30th ult., requesting that you may be furnished a list of the Des Moines River grant above the Raccoon Fork. In reply, I have to state that said list has not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not completed on the books of this office until recently. Said list is now in course of preparation, and will be ready for transmission at an early day. In the latter part of your letter you say, "The lists heretofore forwarded, of land below the fork have been furnished the secretary of state instead of the board, who are the rightful and only agents of the State for said land."

In the absence of evidence showing the right of another to receive confirmed lists of State grants, it is usual to send them to the secretary of state. Such is the case at present in relation to this grant. If, however, you will furnish this office with evidence as to your right, as secretary of the board of public works, to receive said lists, and to correspond with this office in relation thereto, they will hereafter receive the desired direction.

I am, sir, your obedient servant.

J. BUTTERFIELD,
Commissioner.

JESSE WILLIAMS, Esq., *Iowa City, Iowa.*

On the 14th January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior of the amount of land which had been granted to the several States respectively, for internal improvements.

The amount charged against Iowa in the list, is 825,078 acres, and the following note is thereto appended: "This amount, in accordance with the decision of the Secretary of the Treasury of the 2d of March, (1849,) eighteen hundred and forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres."

On the 13th of March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading:

No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2d, 1849.

On the 6th of April, 1850, the Secretary of the Interior, who now had the supervision of the General Land Office, made the following decision:

DEPARTMENT OF THE INTERIOR,
Washington, April 6th, 1850.

SIR: Having considered the question submitted to me connected with the claim of the State of Iowa to select, under the act of August 8th,
166 1846, lands for the improvement of the Des Moines River, I am

clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Fork, without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August, 8th, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law not having been carried into effect by him, his opinion merely expressed, is open for reversion.

The lists of sections and other papers submitted with your letter of the 13th ultimo are herewith returned.

As Congress is now in session, and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On the 14th of April, 1850, the Senators and Representatives of Iowa protested against this decision, and appealed therefrom to the President. He referred the matter to the Attorney General, (Mr. Johnson,) who, on the 19th of July, 1850, made his report, giving it fully as his opinion that, by the terms of the grant itself, it extended along the Des Moines River up to its very source.

Previous to the promulgation of this opinion, President Taylor died, and a new cabinet was formed not long afterwards, and before any further action was taken upon this matter. Instead of giving effect to the opinion of Mr. Johnson, the question was submitted anew to the Attorney General, (Mr. Crittenden,) who, on the 30th of June, 1851, decided that, in his opinion, the grant did not extend above the Raccoon Fork.

The Secretary of the Interior, Alex. H. H. Stuart, at first (26th of July, 1851,) concurred in this opinion, but afterwards consented to bring the whole matter before the President and Cabinet, who made a decision as indicated in the following letter:

DEPARTMENT OF INTERIOR,
Washington, Oct. 29th, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month. I have reconsidered and carefully reviewed my decision of the 26th of July last, and in doing so find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country; and, although my own opinion on the true construction of the grant is unchanged, yet, in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinion of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections, without prejudice to the rights, if any there be, of other parties; thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary.

167 You will please, therefore, as soon as may be practicable, sub-

mit for my approval such lists as have been prepared, and proceed to report for like approval, lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork, as far as the surveys have progressed, or may hereafter be completed and returned.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

To the COMMISSIONER OF THE GENERAL OFFICE.

On the following day three lists of lands were prepared in the General Land Office, the heading of which will show their respective purposes, and are as follows:

List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that such grant extended to the north boundary of the State.

List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the ford.

List No. 3, showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

DEPARTMENT OF THE INTERIOR,
October 30th, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the view expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART, *Secretary.*

The following amounts of land were, at different times, approved and certified to the State of Iowa, under this grant, all lying above the Raccoon Fork:

October 30th, 1851	81,707.93	acres.
March 10th, 1852	143,908.37	"
December 17th, 1853	33,142.43	"
December 30th, 1853	12,813.51	"
	271,572.24	

Among the lands so certified and approved were the lands mentioned in the pleadings in this suit.

The following in the heading of the list which was approved by the Secretary of the Interior on the 17th December, 1853, together with the terms of approval; a similar heading and approval was appended to the list approved on the 30th of the same month. A list showing the va-
168 cant lands in the odd-numbered sections above the Raccoon Fork, and within five miles of the Des Moines River, so far as the sur-

veys have progressed, falling to the State of Iowa, under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved.

Which list was approved in these words:

DEPARTMENT OF THE INTERIOR,
December 17, 1853.

The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

R. McCLELLAND,
Secretary.

On the 21st of March, 1856, the Commissioner of the General Land Office decided that the grant was limited to the Raccoon Fork. The matter was then brought anew before the Secretary of the Interior, and was by him referred to the Attorney General.

The Attorney General (Cushing) replied to Secretary McClellan' in an elaborate opinion, dated 29th May, 1856, in the course of which he said: In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the questions involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account—no more right, where a settlement is in favor of a third party than where it is in in favor of the United States. When a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion of Dec. 28, 1852, See also Bank of Metropolis vs. the United States, XV Peters, p. 400; ex parte Randolph, 11 Brocken., p. 740,)

If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final as respects the United States. * * It is one thing to undo an act done, and quite another thing to cease to persevere in a previous line of action as to acts of a continuous nature.

It might, with much plausibility, be argued that while Mr. Walker's order was an opinion merely, and did not bi'd Mr. Ewing, so, what Mr. Stuart did, though final as to lands actually approved, was but a precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the disposition of the particular lands made by him is irrevocable, but the principal on which he did it is open to re-examination as respects any other lands in the same right claimed by the State, and that, in executing the same law, you are to execute it, according to your own understanding of its force and effect. That may be so, and yet the contingency is not exactly of the application of a precedent to a new case, for the grant to Iowa is one thing, although it be composed of parts or
of new sets of parcels appertaining to the general whole. Mr.
169 Stuart decided to adopt the opinion of Mr. Walker, which carried

the grant above Raccoon Fork; and he proceeded to execute, and did execute that decision in part. And the true question is, of the completion of the execution by you of what had been partially executed by Mr. Stuart. I think it must be a clear case of manifest illegality in the work commenced and half executed by one Secretary, to justify the abandonment of it by his successor. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions on the part of Mr. Walker and Mr. Johnson, and the administrative acquiesence in those opinions on the part of Mr. Stuart. In my judgment it is not for the good of the public service, while it is prejudicial and sometimes grossly unjust to private interests concerned, for the executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that, upon better reflection at the outset, a different decision would have been rendered. To indulge in such oscillation of action, under the influence of ordinary causes of perturbation, is not seemly on the part of the Government.

In the present case of lands above the Raccoon Fork, claimable by the State within its limits, twenty-six fifty-sixth parts — nearly half—the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that a determination of the question, proper to be acqueesced in by you as a settled fact of administration. * * *

Subsequently application was made through Hon. Reverdy Johnson, in behalf of The Des Moines Navigation and Railroad Company, to the Secretary of the Interior, to issue patents for the lands which had been certified and approved to the State of Iowa under the said act of August 8th, 1846, and by the State conveyed to said company.

To this application the Secretary replied as follows:

DEPARTMENT OF THE INTERIOR,
November 10, 1856.

SIR: Having duly considered the subject brought to my attention personally a few days since, and specially referred to in your letter of this date, I have not been able to satisfy myself that the Department has any power to issue patents where the law not only does not authorize it to be done, but provides another mode for the passing of the title to the lands in question; and the practice having been in accordance with this view of the absence of authority, I deem it proper to adhere to it.

In the opinion of the Attorney General of the 29th May last, in the Des Moines River case, it is stated: "In so far as regards selections already approved, whether by yourself or Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was, in each case, done by the competent legal authority and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account—no more right where a settlement is in favor of a third party than where it is in favor of the United States. Where a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of a mistake in a matter of fact, or the discovery and production of material new testimony. (Mr Crittenden's opinion of December 28th, 1852, MS. See also Bank of Metropolis
170 vs. The United States, XV Peters, p, 400; ex parte Randolph,

II Brocken, p. 470.) If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final, as respects the United States."

In the foregoing views of the Attorney General I have concurred; and for the reason that the acts of approval by Mr. Stuart and myself have divested the United States of the title, I can see still further ground to decline issuing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment, like selections not yet approved.

Respectfully, your obedient servant,

R. McCLELLAND, *Secretary.*

To Hon. R. JOHNSON, *Baltimore, Md.*

Among the lands approved and certified to the State of Iowa under said act of 8th August, 1846, on or prior to the 30th December, 1853, were the lands mentioned in the declaration in this suit.

As often as any of said lands were so certified and approved, an entry was made upon the tract-books or register of the public lands, contained among the records of the General Land Office, showing the lands so approved, by township and district and section, as follows:

Township No. ——, range No. ——, district of —— ——.

Description of the tract.				Contents.		Rate per acre.		Purchase money.		
Part of section.	Sec'n.	Town.	Range.	Acres.	100ths.	$	Cts.	$	Cts.	Name of purchaser.
										Granted to the State for the Des Moines River improvement, per act of 8th August, 1846. Approved 17th Dec., 1853. (Or other date, according to the time when the particular section was approv' to the State by the Secretary of the Interior.)

Such an entry was made upon said tract-books and records of the Land Office as to all the lands which were approved to the State of Iowa under the act of 8th August, 1846, including the lands in question in this suit; and said entries remained upon said record uncancelled, and without any qualification, during the whole period from the time when they were originally made until after the decision of the Supreme Court of the United States in the case of Litchfield vs. Dubuque and Pacific Railroad Company, reported in 23d Howard, p. 66.

The lands so approved were, at the time of approval, marked and indicated upon the township maps or plats in the General Land Office, as being included in and forming part of the grant of lands made to the State of Iowa by said act of 8th of August, 1846, and they remained so marked and indicated all the time thenceforth until after the
171 date of said decision; and during the same period the said lands

were also marked and indicated upon the township maps and plats kept in the land offices of the United States in the State of Iowa, in the districts where said lands were situated, as having been granted to said State under and by virtue of said act of 8th of August, 1846. And after the date of the order by the General Land Office of 1st June, 1849, (hereinbefore set forth,) directing said lands to be withheld from sale, the said lands were always, by the General Land Office and by the Department of the Interior, withheld from sale or pre-emption, and were, by said Land Office and Department of the Interior, considered and held as appropriated, and reserved for the purpose of satisfying the grant made by said act.

In 1859 a petition from citizens of Iowa was addressed to the President, asking that certain specified townships of the lands above the Raccoon Fork, which had been so approved to the State under said act, should be brought into market. In reply thereto the Commissioner of the Land Office addressed to Senator Jones of Iowa, the following letter:

GENERAL LAND OFFICE, *February 17th*, 1859.

SIR: I have the honor to acknowledge the receipt of the petition referred by you to the Department on the 12th inst., of sundry citizens of Fort Dodge district, Iowa, asking that certain lands in said district may be brought into market; and in regard to the matter, to state that the lands referred to by the memorialists are withheld from market in view of the grant to Iowa by act of August 8th, 1846, to aid in the improvement of the Des Moines River.

Very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

HON. G. W. JONES, *U. S. Senate.*

In the annual report of the General Land Office accompanying the report of the Secretary of the Interior to Congress, in 1858–1859, is this statement:

The following is an exhibit of the present condition of the Des Moines River grant in Iowa, under the act of 8th August, 1846.

		Acres.
Lands below the Raccoon Fork, approved July 13th, 1848, by Secretary R. J. Walker		321,028.03
Lands situated above the Raccoon Fork, conditionally approved by Secretary A. H. H. Stuart—		
October 30, 1857, list No. 1	107,195.78	
" " " " 2	25,487.98	
" " " " 3	81,707.93	
March 10, 1852	143,908.37	
		358,299.95
Approved by Secretary R. McClelland—		
December 17, 1853	33,142.43	
December 30, 1853	12,813.51	
		45,955.94
Making aggregate approved		725,288.92

[An error occurred in said report in stating the amount of lands
172 approved above the Raccoon Fork, by improperly including lists

Nos. 1 and 2. The true amount of lands above Raccoon Fork, approved to the State, is obtained by omitting lists No. 1 and 2, and is 271, 572.24, and as hereinbefore set forth.]

As fast as such lands were approved to the State of Iowa the State entered into possession of the same, including the lands above as well as those below the Raccoon Fork; and thenceforth the State continued in possession of all the lands which had been so approved to it, claiming title to said lands under said grant and act of approval, and exercised acts of ownership over the same, publicly and constantly, until it, from time to time, sold the same; and thenceforth the State or its grantees have remained publicly and notoriously in possession of said lands, claiming ownership of the same, and the State and its grantees were so in possession, claiming ownership and exercising acts of ownership, on the 15th of May, 1856, (when the act of Congress was passed granting lands to Iowa for railroad purposes,) and the 14th of July, 1856, (when the State passed an act to accept said grant and regranting lands to certain railroad companies,) and on the 22d of March, 1858, (when the joint resolutions of the general assembly of Iowa was passed authorizing a settlement with, and a conveyance of, lands to the Des Moines Navigation and Railroad Company,) and on the 3rd of May, 1858, and 18th of May, 1858, when patents were executed and delivered by the State, conveying said lands to said company, as hereinafter set forth.

After the making of said grant by the act of 8th of August, 1846, the State proceeded from time to time, as in said act authorized, to sell and dispose of said lands, applying the proceeds to the improvement of the Des Moines River, as contemplated in said act; and, on the 9th of June, 1854, the State, by its authorized agents, made a contract with the said defendants, The Des Moines Navigation and Railroad Company, in by which the said company agreed to finish said improvement as contemplated in said act of Congress and specified in said contract, and to expend for that purpose all necessary sums to the amount of $1,300,000; and in consideration of such contract and expenditure, and in payment for the same, the State sold and agreed to convey to said company from time to time, and in the manner provided by said act of Congress, the whole balance of the lands which had been certified and approved to the State under said act, and which then remained unsold, and all other lands which should be thereafter certified and approved to the State of Iowa under this act.

Among the lands thus sold to said company were the lands mentioned in the declaration in this suit.

After the making of said contract, the said company proceeded with the work upon said improvement; and as the said improvement progressed, and, in accordance with the said act of Congress, the State, from time to time, by its regular and authorized officer, issued to said company, in payment for work done by it upon said improvement, and in pursuance of the aforesaid contract, sundry certificates, in form and substance as follows:

OFFICE REGISTER OF THE
DES MOINES RIVER IMPROVEMENT,
Ottumwa, May 14th, 1855.

I certify that the following lands were sold by me on this day of to The Des Moines Navigation and Railroad Company, in pursuance of the contracts and agreements with the said company, for the construction of the said Des Moines River improvement, to wit:

173 (Here follows a long list of lands set forth specifically by section, township, and range, together with the number of acres in

each tract respectively, including the lands mentioned in the declaration in this suit.)

(Signed) GEORGE GILLESPIE,
Register, &c.

The said George Gillespie was, at the said dates, register of the Des Moines improvement, and was the proper person to transfer said lands and issue the said certificates.

The General Land Office decided, in 1856, not to certify any more lands to the State under the grant of 8th August, 1846. Thereupon the said defendants suspended the work upon said improvement, and afterwards said company and the State made a final settlement as follows:

The general assembly of said State, of 22d March, 1858, passed a joint resolution, as follows:

Whereas The Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen, and do now exist, between the State of Iowa and said company, and it being conceived to be to the interest of all parties concerned to have said matters and all matters and things between said company and the State of Iowa settled and adjusted; now, therefore,

Be it resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water-rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company; and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers or agents, prior to the 23d day of December, 1853, under said grant; and said company or its assignees shall have right to all of said lands as herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claim in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are 25,487.87 acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

174 And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description prepared for or intended for the construction of

locks or dams in said improvement, wheresoever the same may be; and the State shall take the existing contracts, but no other liabilities of any name or nature, except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date, beyond the percentage retained from the contractors under their agreements; and the said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement, (as fast as he may require the same, to liquidate existing liabilities against said Des Moines River improvement,) on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of $11,000, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: *Provided*, That no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant: *And provided also*, That if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State so as to become subject to grant, the said remaining lands, after the payment of all liabilities as aforesaid against said improvement, and the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to The Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided further*, That if the said Des Moines Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto.

The Des Moines Navigation and Railroad Company ratified and accepted the proposition embodied in the joint resolution within the time and in the manner therein specified. The company paid to the State the sum of $20,000 in cash, and released and conveyed to the State the dredge-boat and materials in said resolution mentioned, which were of the cash value of more than $100,000, and in all respects, on its part, fully complied with all the terms of settlement in said joint resolution provided.

Thereupon the governor of the State of Iowa addressed to the President of the United States a certificate as follows:

175 EXECUTIVE CHAMBER,
Des Moines, Iowa, April 28th, 1858.

To his Excellency JAMES BUCHANAN,
President of the United States:

I, Ralph P. Lowe, governor of the State of Iowa, as required by act

of Congress, approved August 8th, 1846, granting certain lands of the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory, do hereby certify that there has been expended from time to time prior to the date hereof, on the improvement of said river, as the work has progressed and the money has been required under certain contracts made by the State of Iowa with the Des Moines Navigation and Railroad Company, the sum of three hundred and thirty-two thousand six hundred and thirty-four $\frac{4}{100}$ dollars, ($232,634 04;) and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress approved as aforesaid, there will be conveyed to said Des Moines Navigation and Railroad Company two hundred and sixty-six thousand one hundred and seven $\frac{23}{100}$ acres (266,107.23) of the land belonging to said grant, and which have been certified and approved to the State of Iowa under said act for the prosecution of the improvement of said river Des Moines.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed, together with my signature.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

And afterwards, the said State, on the 3d of May, 1858, executed and delivered to the Des Moines Navigation and Railroad Company a certain deed or patent, under the seal of the State, as follows:

This indenture, made this third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company, for the improvement of the Des Moines River, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company the following referred to and described lands, to wit:

(Here follows a description of several thousand acres of land, set forth specifically by section, township, and range, including the lands mentioned in the declaration in this suit.)

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining unto the Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be here-
176 unto affixed. Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

(Signed) RALPH P. LOWE.

By the governor:

(Signed) ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the

governor June 10th, 1858, and recorded in Des Moines River records, book A, pages 41, 42, 43, and 44, June 18th, 1858.

(Signed) T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Deputy.*

On the same day the said State executed and delivered to said company several other similar patents under the seal of the State, and the aggregate amount of the land described in and conveyed by all of said patents was 266,107.23 acres, of which about 58,830 acres were below, and the remainder above, Raccoon Fork.

On the 18th day of May, 1858, said State also executed and delivered to the said company a deed and patent under the seal of the said State, of which the following is a copy:

This indenture, made this 18th day of May, one thousand eight hundred and fifty eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of a joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the Des Moines Navigation and Railroad Company the following-described lands, to wit: All lands granted by an act of Congrsss approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa by its officers and agents prior to the 23rd day of December, 1853, under said grant; and said company or its assigns shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company. And it is understood that, among the lands excepted and not granted by the State to said company, are 25,488.87 acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa:

To have and to hold the above-described land, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

177 In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed. Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.
By JNO. M. DAVIS, *Deputy.*

This is to certify that the foregoing deed was received from the governor June 10th, 1858, and recorded in Des Moines River records, book A, pages 45 and 46, June 18, 1852 [62.]

T. S. PARVIN,
Register of Land Office.
By D. S. WARREN, *Deputy.*

Said State caused said patent to be duly recorded in Iowa, and also filed an original or copy of said patent in the office of the Commissioner of the General Land Office, at Washington, with a list of the lands intended to be conveyed thereby, of which the lands mentioned in the declaration in this suit were part.

At the December term of the Supreme Court of the United States, hold in 1859-1860, a decision was made in the case of Litchgeld vs. The Dubuque and Pacific Railroad Company, and was reported in 23 Howard, 66. Said decision was rendered on the 9th of April, 1860.

When such decision became known to the General Land Office, the Commissioner, on the 18th May, 1860, issued a printed notice, which was sent to the land offices at Fort Des Moines and Fort Dodge, in Iowa, of which the following is a copy:

No. 661.—*Notice respecting certain lands in the State of Iowa.*

Notice is hereby given that lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant, in that State, above the mouth of the Raccoon Fork of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved for the time being from sale or from location, by any species of script or warrant, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual bona-fide settlers holding under titles from the State, to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May*, 1860.

Such notice was at once posted in a conspicuous place in said land offices in Iowa, and so remained posted until the close of the year 1863.

On 25th May, 1860, W'm T. Steiger, an agent in behalf of The Dubuque and Pacific Railroad Company, filed in the General Land Office a list of lands lying within the claimed limits of the Des Moines River grant above the Raccoon Fork, and claimed to select some of
178 them for said railroad company, under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added—

The tracts in said list are above the Raccoon Fork, and within the lands that had been selected under the Des Moines River grant by act of 8th of August, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant above the said fork, the present lists are presented by you. As the matter has been placed in train for congressional intervention, no action can be taken

in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

Respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

On the 7th July, 1860, the Commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

Without passing upon, or, in fact, considering the question as to the right of the State under the railroad grant to these lands which, at the date of the grant, had been withdrawn from sale or location, the fact that Congress had taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

Respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

On the 6th of September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Office:

DEPARTMENT OF THE INTERIOR,
Washington, September 6, 1860.

SIR: In the absence of any direct application by the governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines River, and the grants for aid in constructing railroads, my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letter of the 7th of July last, and 3d instant, are now returned.

Very respectfully, your ob't servant,

J. THOMPSON,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On November, 3d, 1860, the Secretary addressed a letter to Hon. Geo. W. Jones, Senator from the State of Iowa, in which he said:

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connexion with the letter of Mr. Steiger, the agent of The Dubuque and Sioux City Railroad Company of the 1st instant, both relating to the certification to the State of Iowa of lists of odd-numbered sections of land within the six and fifteen mile limits of the railroad, "from the city of Dubuque to a point on the Missouri River near to Sioux City."

179 For your information I herewith enclose copies of my letters of the 6th of September last, to the Commissioner of the General Land Office, and of the first of October to Mr. Steiger, and in reply to your letter would state that as respects those tracts within the limits of the railroad grant which have already been certified to the State of Iowa by my predecessor, under the previous grant of August 8th, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, and a direct demand from the State authorities for lists under the later grant, I deem it proper to suspend action at present, so far as the claims interfere. The subject of these

opposing claims is involved with proposed legislation pending in Congress, and the State authorities still assert the equity of the title which has been recognized by my predecessors, though since declared to be invalid by a decision of the Supreme Court of the United States.

* * * * * *

Very respectfully, your ob't servant,

J. THOMPSON, *Secretary.*

Hon. GEO. W. JONES, *of Iowa, present.*

On the 2d March, A. D. 1861, the Congress of the United States passed a joint resolution, providing that "All the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress, approved August 8th, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

On the 10th of April, 1862, the Secretary of the Interior addressed to the Commissioner of the Land Office a letter, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1862.

SIR: In answer to your communication of the 18th of March last, making certain inquiries respecting the proper disposition of lands in Iowa, granted to the State by act of Congress of 15th of May, 1856, and by joint resolution, approved March 2d, 1861, I am of opinion that they are to be disposed of as said act and resolution directs, without any regard to the act of August 8th, 1846, referred to in your letter.

It appears that the action of this Department in construing the last-named act has been in no respects uniform; not sufficiently so to form a precedent for its present direction; and if it had, there are now other considerations which will control its action. The Supreme Court has decided, in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, (23 Howard, p. 66,) that the act of 8th of August, 1846, did not cede any lands to the State above the Raccoon Fork, and the before-mentioned joint resolution declares that the lands above the Raccoon Fork were improperly certified as a portion of the grant of 8th of August, 1846.

It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15th, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8th, 1846.

After completely satisfying the demands of the State, embraced by that act, so much of the residue of the lands north of the mouth of Raccoon Fork, as was certified under the supposed grant of Au-
180 gust 8th, 1846, and which the State of Iowa had sold to bona-fide purchasers prior to the 2d of March, 1861, will be also certified to the State of Iowa.

The act of 15th of May, 1856, granted lands to the State for railroad purposes, except such lands as the rights of pre-emption have attached thereto. This last remark is made, because it affects the case of Cilly, and, may be, others claiming pre-emption on said lands.

Very respectfully, your obedient servant,

CALEB B. SMITH, *Secretary.*

To the COMMISSIONER GENERAL LAND OFFICE.

Up to the time of receiving said letter, the General Land Office had continued to reserve "the lands lying along the Des Moines River in Iowa, within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river," in the manner and for the purposes mentioned in its aforesaid printed notice No. 661, dated 18th of May, 1860. After receiving said letter, the Commissioner wrote to ex-Governor Grimes, then a Senator from Iowa, as follows:

GENERAL LAND OFFICE, *April 15th*, 1862.

SIR: I have the honor to enclose herewith a copy of the decision of the Secretary of the Interior of the 10th instant, in the case submitted to the Department in our letter of the 18th ult., a copy of which was furnished you in a letter of the same date.

Pursuant to said decision, it is proposed to make out the lists of lands enuring to the State for railroad purposes, under the act of 15th of May, 1856, in so far as the 6 and 15 miles limits of certain routes under that grant traverse the region which had been claimed by the State of Iowa, under the act of 8th of August, 1846, for the Des Moines River improvement, above the Raccoon Fork, irrespective of the certified lists to the latter, which are held to be invalid under the decision of the Supreme Court of the United States, at its December term, 1859.

With great respect, your obedient servant.

J. M. EDMUNDS, *Commissioner.*

Hon. J. W. GRIMES, *U. S. Senate.*

The governor of Iowa replied, as follows:

EXECUTIVE OFFICE, *Iowa, May 6th*, 1862.

J. M. EDMUNDS,
Com. Gen. Land Office, Washington City, D. C.

SIR: Yours of the 15th April last, covering copy of decision of Secretary Smith, in regard to the effect of the grants of lands, made to this State by the acts of August 8, 1846, and May 15, 1856, is at hand.

A portion of these lands was once certified to this State as school lands, and the certification subsequently set aside, because the department decided them to be covered by the act of 8th August, 1846.

They were then certified to the State under the last-named act, and now that certificate is set aside, because the lands were not covered by that act. They are now decided to be covered by the act of 1856. This State has sold portions of these lands as school lands, and as lands enuring to the State under the act of 1846, and the titles of many grantees of the State are involved in the present decision. I understand the question will be again brought before the Supreme Court of
the United States, and my principal object in writing you is, that
181 this State may not lose her equitable claims for reclamation on
the United States, in case the State suffers loss by reason of the failure of the title conveyed by this State under certificates from the United States

Very respectfully, your obedient servant,

SAMUEL J. KIRKWOOD.

On 26th June, 1842, the said Commissioner of the Land Office wrote to the governor of the State of Iowa, as follows:

GENERAL LAND OFFICE, *June 26th*, 1862.

SIR: The attention of this office has been called to the condition of

the lands in the region of the Des Moines River, above the mouth of the Raccoon Fork, which were claimed by the State of Iowa under the act of 8th August, 1846, for the improvement of said river.

1st. The act of 1846, by the decision of the Supreme Court of the United States at its December term, 1859, is restricted to the lands, lying below the mouth of the Raccoon Fork and the claim of the State to all lands lying above that point is abnegated.

2d. Under said decision of the Supreme Court the Secretary of the Interior has held that the alternate, odd-numbered sections, falling within the six and fifteen mile limits of the railroads, where they traverse the region of the Des Moines River above the mouth of the Raccoon Fork, would enure to the State under the act of 15th May, 1856, to aid in the construction of said roads.

3d. The joint resolution of Congress of the 2d March, 1861, declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said state improperly by the Department of the Interior, as part of the grant by Congress, approved August eighth, eighteen hundred and forty-six, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

To enable us properly to act in the matter, in view of the aforesaid decision and resolution, I have to request that you will furnish this office with a list of the tracts of lands therein referred to, "held by bona-fide purchasers of the State of Iowa," on the 2d of March, 1861, certified under official seal, specifying in each case the date of seal, name of purchaser, consideration, and date of patent or deed of conveyance by the State, with all the essential particulars connected with the transaction.

This information is requested at your earliest convenience.

Very respectfully, your obedient servant.

J. M. EDMUNDS, *Commissioner.*

To his Excellency GOVERNOR OF IOWA,
Des Moines, Iowa.

In reply the governor of Iowa caused to be filed in said General Land Office a list, certified to by the said governor and by the land commissioner of said State, under their official seal, of all the lands situated above the Raccoon Fork of the Des Moines River which had been certified and approved to the State, under said act of 8th August, 1846, and also setting forth that all of said land had been sold and conveyed by said State, by deed or patent, prior to said 2d March, 1861, as follows:

182 *List of Des Moines River lands, above the mouth of the Raccoon Fork, sold by the State of Iowa.*

Then follows list of about 697 individual sales as follows:

Dates of patents.	No. of patents.
Feb'y 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
Sept. 1, 1858	13
Oct. 1, 1858	1
March 14, 1859	5

April 9, 1859	3
April 20, 1859	2
May 23, 1859	18
May 31, 1859	44
July 12, 1859	1
Feb'y 25, 1860	1
	697

Example: W. ½ of N.W. ¼, N. E. ¼ of N.W. ¼, S. 19, T. 78, R. 24, Ac. 122.83, at $1 25, March 25, 1852, Phineas S. Cassidy. Patented Feb'y 16, 1853. No. 2,855.

Immediately follows certified copies of joint resolution of the general assembly, approved March 22, 1858, and resolution of acceptance of Des Moines Navigation and Railroad Company of 15th April, 1858, signed by R. S. Burrows, president Des Moines Navigation and Railroad Company. Certified as a true copy by Elijah Sells, secretary of state.

Then follow list of lands.

Parts of section.	Sec.	T.	R.	Acr's	Date of sale.	To whom sold and patented.	Date of patent.	No of pat.
					May 14, 1855	Des Moines N & R. R. Co.	May 3, 1858	9
					Do	do	do	10
					Do	do	do	11
					May 6, 1856	do	do	9
					Do	do	do	11
					Do	do	do	12
					Do	do	do	13
					Do	do	do	112
					Do	do	do	13
					De	do	do	14
					No date	do	do	14
					May 14, 1856	do	do	9
					May 6, 1855	do	do	9

(Here follows copy of the general deed from the State of Iowa to the Des Moines Navigation and Railroad Company, dated May 18th, 1858.)

The said list embraced all the lands situated above Raccoon Fork, mentioned in the patents from the State to said company, including that in question in this suit.

183 *Copy of final certificate.*

STATE LAND OFFICE,
Des Moines, Iowa, July 22, 1862.

I, A. B. Miller, register of the State land office for the State of Iowa, do hereby certify that the within and foregoing lists are true and exact exemplifications of the sales and records of patents made out for the "Des Moines River grant," in land certified to the State of Iowa under the act of August 8th, 1846, for the "improvement of the navigation of the Des Moines River," as shown by the records and plats now on file in this office giving description of the lands sold, the amount paid therefor, "date of sale," "name of purchaser," to whom patented, date and number of patent—except a part of that sold to the Des Moines Navigation and Railroad Company, the date of which sale is not in this office; but the date of the patents *are* shown—and the consideration of this latter class of lands was work upon the improvement of the Des Moines River, upon which the Navigation Company took lands at $1 25

per acre. These lists include all land heretofore certified to the State, under the act of 1846, above the mouth of the Raccoon Fork, and includes a copy of a deed made out to the "Des Moines Navigation and Railroad Company," for all of these lands to which the State of Iowa had any title.

In testimony whereof, I have hereto set my hand the date above written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE,
Des Moines, Iowa, July 22, 1862.

I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the above-named A. B. Miller was duly elected and qualified register of the State land office; that he is by the laws of the State of Iowa the custodian of all books and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is entitled to full faith and credit, and that the above is his genuine signature.

In testimony, I have hereunto set my hand and caused the great seal of the State of Iowa to be hereto affixed, the date above written.

[L. S] SAMUEL J. KIRKWOOD.

By the governor:

ELIJAH SELLS, *Secretary of State.*

By a subsequent act, approved July 12th, 1862, Congress enacted "that the grant of lands to the then Territory of Iowa for the improvement of the Des Moines River, made by the act of August 8th, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Fork and the northern boundary of said State; such lands are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22nd, 1858."

* * * * * * *

By section one of the act last aforesaid of the general assembly of the State of Iowa, it was enacted "that all the lands granted to the
184 then Territory of Iowa by an act of Congress, approved August 8th, 1846, entitled 'An act granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory,' and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government; and also all stone, timber, and other material turned over to the State by the Des Moines Navigation and Railroad Company, in settlement with the State of Iowa, be, and the same are hereby, disposed of and granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river, by way of the city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, excepting all the land belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to the Des Moines Navigation and Railroad Company, by virtue of a settle-

ment now pending between the State and said company," &c., "this grant to become operative as soon as Congress shall assent to or permit a diversion, or the title thereto shall become vested in the State, so as to be subject to grant."

[By the statutes of Iowa it is provided that "where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee."—Code of Iowa, (revision of 1860,) p. 390, section 2210.]

The following is a copy of a letter from the Commissioner of the General Land Office to the President of the United States:

GENERAL LAND OFFICE,
September 19th, 1850.

His ex'y M. FILLMORE,
President of the United States.

SIR: I have the honor to acknowledge the receipt of the letter from several members of the Senate and House of Representatives, referred by you to this office, asking that the sale of the lands within twenty-five miles of the supposed route of the railroad from Chicago to Mobile be suspended for six months, or until the lands shall have been located, in order that the act may be fully carried out that was recently passed by Congress, "granting the right of way, and making a grant to the States of Illinois, Mississippi, and Alabama," in aid of the construction of that road; and, in accordance with your instructions, beg leave to report:

That, so far as I have been able to examine the question, no authority has been specifically conferred upon the President, by law, to suspend the sale of lands in cases of this character, where they have been proclaimed and offered at public sale. It would appear, however, that he has always been considered as having that authority, by implication, from the nature of the duties devolved on him by the whole system of laws making provision for the sale and disposition of the public domain. For the cases, among others, in which this authority has been exercised by the President, I refer to a letter from this office to the register at Piqua, Ohio, on the 28th of September, 1828, and which is as follows, to wit:

185 "The President having been advised by the governor of Ohio that the route of the canal from Dayton to Lake Erie, by the Maumee, will probably pursue the course of the *Anglaise* River, from the head of some one of its branches to its mouth, he had directed that the lands lying on the same, and to the extent appropriated by the act passed the 24th of May last, be reserved from sale till further advised. The governor of Ohio has been requested to designate to you that branch of the *Anglaise* on which the canal will most probably be located.

"With respect, &c.,

"GEO. GRAHAM, *Commissioner.*"

Similar instructions were issued by Commissioner Blake to the land office at Green Bay, on the 11th of April, 1844, for reserving the lands along the Wisconsin and Fox River, in anticipation of the passage of an act making a grant for the improvement of those rivers; and the reservation then ordered was extended by instructions to those offices, of the 8th of August, 1846, the day on which the law was passed by Congress making the grant.

In many other cases the same authority has been exercised, but to a less extent; the foregoing, however, being of an early and late date, are deemed sufficient to show that the President has always been regarded as having this authority; and as it has thus been exercised, and in the present case must of necessity be inferred to enable the Executive to secure to the States mentioned, and the General Government, the benefits conferred by the law, and thus carry out the intention of Congress in passing it, I respectfully recommend:

That instructions be issued to the land offices in Illinois to withhold from sale, or location of any kind, till further ordered by this office, all the lands belonging to the Government within three full townships, or eighteen miles, on each side of the supposed line of this road; and that the land offices in Mississippi and Alabama be instructed to withhold, in like manner, all the lands within four full townships, or twenty-four miles, on each side of said route.

The lands can be suspended from sale much more conveniently by townships than by any other given distance; and the reason for recommending the withholding of a less extent in Illinois than in the other States is, that the lands in that State are more sought by actual settlers at this time than in the others, and the general route that the road will pass can be more nearly ascertained.

All of which is most respectfully submitted.

With great respect, your obed't servant,

J. BUTTERFIELD, *Commissioner.*

The following communication was addressed, at its date, by the Secretary of the Interior to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
August 29, 1864.

SIR: It has been determined, with the approbation of the President, after due consideration on the subject, to bring again into market the lands heretofore reserved for railroad purposes, in all cases where grants had not been made at the close of the late session of Congress, and to decline, in future, to withdraw lands for such purposes until after the necessary grant shall have been actually made.

R. MCCLELLAND, *Secretary.*

COMMISSIONER OF THE GENERAL LAND OFFICE.

186 While the act of 15th May 1856, granting lands to Iowa for railroad purposes was pending in Congress, the following proceedings occurred:

On the 6th May, 1856, the bill was reported in the House of Representatives by Mr. Bennett, chairman of the Committee on Public Lands, with an amendment, and, as amended, it passed the House on the 8th of May, 1856.

Upon the discussion on the bill, Mr. Bennett said: "It is a bill granting lands to the State of Iowa for railroad purposes on the alternate-section system, that is, doubling the price of the reserved sections, and giving to the railroad companies every other section to a limited width not to exceed fifteen miles. It confines them to take the lands on the line of the railroad. When each twenty miles is built, they must take the alternate sections within the twenty miles." (See Congressional Globe, vol. 34, p. 1122, 1st session, 34th Congress.)

Upon the discussion of the same bill in the Senate, (Congressional Globe, vol. 34, p. 167,) Mr. Jones, Senator from Iowa, said of the bill:

"It provides for starting four roads from the Mississippi River, but neither one of those roads will get any land until it approaches the centre of the State. The intervening lands have already been sold, and the money for *it* is now in the coffers of the Government."

Mr. Yulee said, (Congressional Globe, vol. 34, p, 6168:) "It is immaterial what may be the extent of the roads, or the quantity of land which may be acquired by the State under this grant, because she will get no lands except for roads which pass through the public domain. If there be public domain through which the roads pass, it is immaterial what the location is. If the principle upon which the legislation rests be right, the public will receive the same benefit from the increased value of the lands which remain to the United States, whether the location be on one line or another."

Senator Adams (Congressional Globe, vol. 34, p. 1169) said: "It is wholly immaterial what the quantity of land may be. We are acting upon the principle that the increased value of the public domain, in consequence of the construction of such a road, will be a full equivalent of the land granted. In that view it is wholly immaterial what the number of acres may be, whether more or less. * * * * * * * * * As far as I have observed, the reserved lands have been doubled in value."

Senator Geyer said, (Congressional Globe, vol. 34, p. 1166 and 1187:) "Under this bill the title to the land will not pass out of the United States until a certain quantity of road be constructed. The title of the land is to pass out of the United States only when twenty miles of road shall have been constructed, and so fast as the road is constructed. Inasmuch as the title does not pass out of the United States, and there is no power in any one to dispose of one acre of the land until the road is made under the bill," &c.

The defendant's counsel thereupon rested their case.

The plaintiff's counsel, further to maintain the issue on their part, gave in evidence the following matters, namely:

On the 15th of May, 1856, Congress passed an act, as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the U. S. of America in Congress assembled*, That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of Platte River; from the
187 city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iow' Central Air-Line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the 42d parallel, across the said State of Iowa to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the

United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any objects of internal improvements, or for any other purpose whatsoever, be, and the same are hereby, reserved from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands; in which case the right of way shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public land when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purpose aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold;
188 and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so from time to time until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5 *And be it further enacted*, That the United States mail shall be transported over said roads under the direction of the Post-Office Department at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

On the 10th May, 1856, the Commissioner of the General Land Office issued, by telegraph, the following order to the register and receiver at Fort Des Moines, Iowa:

"You will suspend, from sale or location, all the lands in your district until further orders. Acknowledge the receipt of this despatch by telegraph and mail.

"THO'S A. HENDRICKS,
"*Commissioner.*"

On the same day the Commissioner, by telegraph, instructed the register and receiver at Fort Dodge, Iowa, as follows:

"You will suspend, from sale or location, all the lands in your district, situated south of the line which divides township ninety-two (92) and ninety-three (93) until further orders. Acknowledge the receipt of this despatch by telegraph and mail.

"THO'S A. HENDRICKS,
"*Commissioner.*"

The lands in question in this suit, and all the lands above the Raccoon Fork, which had been approved to the State of Iowa under the act of 8th August, 1846, were situated in the Fort Des Moines land district and in that portion of the Fort Dodge district in which said orders directed sales and locations to be suspended; and a large quantity of other lands, then belonging to the United States, were also situated in the same districts.

On the 15th May, 1856, the Commissioner of the General Land Office addressed the following letter to the register and receiver at Fort Des Moines, Iowa:

GENERAL LAND OFFICE, *May 15th*, 1856.

REGISTER AND RECEIVER,
Fort Des Moines, Iowa.

GENTLEMEN: By my telegraphic despatch of the 10th inst. you were directed to suspend, from sale or location, all the lands in your district until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running from the Mississippi River to the Missouri, by a bill which had passed both houses of Congress. Said bill having this day been approved by the President, has become a law, and you will continue to withhold, from sale or location, until further orders. It is designed to adjust these several grants with as little delay as practicable, in order that the lands remaining to the United States may be returned to market.

I am, very respectfully, your obedient serv't,

THO'S A. HENDRICKS,
Commissioner.

A similar letter was addressed, at the same date, to the register and receiver at Fort Dodge, Iowa.

189 On 19th June, 1856, the Commissioner of the Land Office addressed to the land officers at Fort Dodge and Fort Des Moines the following letter:

GENERAL LAND OFFICE, *June 19th*, 1856.

GENTLEMEN: Instructions having been sent you from this office by telegraph on the 10th ult., and subsequently by mail on the 15th ult., in reference to the withdrawal from market of certain lands in your district, in pursuance of an act of Congress approved on the 15th ult., making a grant of land to the State of Iowa, in alternate sections, to

aid in the construction of certain railroads in that State, you are advised that settlements are authorized upon any of the lands thus withdrawn and rights of pre-emption may be acquired as well to sections which may be odd-numbered and within the six-mile limits of the line of the railroads as to the other lands so reserved.

By the first section of the act referred to the United States can dispose of, by pre-emption, any of the lands thus withdrawn up to the time "when the lines or routes of said roads are definitely fixed." Then, and not till then, will the right of the State attach, under the said act, to all vacant lands in the odd-numbered sections within the six-mile limits.

Acknowledge the receipt of this.

Very respectfully,

THO'S A. HENDRICKS,
Commissioner.

Afterward the Commissioner of the Land Office issued the following notice, dated .

No. 591.—*Notice for restoration of certain lands to market in Iowa.*

The grant of land made by the act of Congress approved May 15th, 1856, to the State of Iowa, to aid in the construction of certain railroads therein mentioned, having been so far adjusted as to authorize the release from withdrawal of the lands hereinafter described, notice is hereby given that all the vacant offered lands heretofore withdrawn from sale or entry along the routes of said railroads which lie outside of six miles on each side of said roads, situated in the under-mentioned townships, which have not been selected in virtue of said grant, or any other grant made by Congress, or legally claimed by pre-emption, and which were subject to private sale at the date of withdrawal, will be restored to private entry on the days and at the places hereinafter specified, &c.

At the land office at Fort Dodge, on Tuesday, the 23d of February next, viz: Townships 86, 87, and 88; ranges 29, 30, 31, 32, and 33.

On the 28th of January, 1857, the Commissioner sent to six different land offices in Iowa, (including those of Fort Des Moines and Fort Dodge,) a letter, of which the following is a copy:

GENERAL LAND OFFICE, *January* 28, 1857.

GENTLEMEN: For your guidance in disposing of the public lands, I have this day transmitted you, by mail, a diagram of the district of lands subject to sale at your office, upon which has been traced the lines of route and the lines of the six and fifteen mile limits, within the said district, of the railroads to aid in the construction of which a grant of lands was made to the State of Iowa by act of Congress approved May 15th, 1856.

As all the vacant tracts in the odd-numbered sections, outside
190 of the six and within the fifteen mile limits, have been selected by the agent of the State in lieu of the lands sold and pre-empted in the alternate sections granted by the act above-mentioned; such tracts are not restored to market by notice No. 591—copy herewith—and you will continue to reserve them, as heretofore, from sale or location, for any purpose whatever.

Respectfully, your obedient,

THO'S A. HENDRICKS,
Commissioner.

While the aforesaid act of 15th of May, 1856, was pending in Congress, and before it had become a law, Hon. Geo. W. Jones, Senator from Iowa, by letter to the Commissioner of the Land Office, inquired as to the quantity of lands which would accrue to the State under the said bill.

In reply the Commissioner addressed to him the following letter and estimate:

GENERAL LAND OFFICE, *May 12th*, 1856.

Hon. GEO. W. JONES, *U. S. Senate.*

SIR: In reply to the inquiries in your letter received this morning, I have to state, according to a hasty estimate at this office:

The enclosed statement, marked A, shows the estimated length of the railroads, and the amount which would accrue to the State under the bill.

I am, respectfully, your ob't serv't,

THO'S A. HENDRICKS,
Commissioner.

A.—*Iowa railroad grants.*

Routes.	Estimated miles.	Acres granted.
Dubuque, via Fort Dodge, to Sioux City	295	1, 132, 800
Lyons City, via Maquoketa, due west to Missouri River	325	1, 248, 000
Davenport, via Iowa City, Fort Des Moines, to Council Bluffs	290	1, 113, 600
Burlington west to the mouth of Platte River	255	979, 200
	1, 165	4, 473, 600
Deduct for Des Moines River grant, which crosses 4 times—10x4	40	153, 600
Leaves	1, 125	4, 320, 000

Quantity to which the State would be entitled, if to be had within the alternate sections within fifteen miles of the roads—

Whole surface of Iowa is ..... 32, 584, 960 acres
Estimated vacant, 30th Sept., 1855 ..... 13, 874, 163 acres
Amount that would be liable for selection if the lands were all vacant, 1,125x15x640 ..... 10, 800, 000 acres
Therefore as 32 : 13 : : 10,809,000 ..... 4, 387, 500 acres

the estimated amount vacant and liable to selection for the grant within the prescribed limits, and equal to the quantity granted. But the deficiency on one route cannot be made up on another; it is not probable, therefore, that the lands will hold out.

On the 14th of July, 1856, the general assembly of the State of Iowa passed an act as follows:

191 An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15th, 1856.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the lands, rights, powers, and privileges granted to and conferred

upon the State of Iowa by an act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15th, 1856, be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress.

* * * * * * *

SEC. 3. That so much of the lands, interest, rights, powers, and privileges as are or may be granted or conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Davenport, via Iowa City and Fort Des Moines, to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Mississippi and Missouri Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the land, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Iowa Central Air-Line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers, and privil'ges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River, at or near Sioux City, with a branch from the mouth of the Tete Des Mort' to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next after the passage of this act, and maps or plats showing such lines and routes shall be filed in the office of the governor of the State of Iowa, and also in the office of the secretary of state of the State of Iowa. It shall be the duty of the governor, after affixing his official signature, to file such map in the Department having the control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which such lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated cannot be obtained by said companies within the limits and along any part of the lines aforesaid, the governor shall from to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents, and the costs, expenses, and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid, and borne by each of said railroad companies respectively, upon and for its own line.

* * * * * * *

192 SEC. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition that in case either of said railroad companies shall fail to have completed and equipped

seventy-five miles of its road within three years from the first day of December, next, thirty miles in addition in each year thereafter for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time aforesaid.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the Secretary of State, and be by the Secretary recorded in the book by him kept for the recording of articles of association.

SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the general assembly of Iowa, not inconsistent with the provisions of this act and the act of Congress making the grant.

* * * * * * * *

SEC. 16. *Be it further enacted*, That any of said companies accepting the grants of lands under this act shall take the same with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa for a misapplication of said grant, incumbrances, or conditions in this act imposed.

The Dubuque and Pacific Railroad Company, mentioned in the 5th section of said act, was organized in 1853, under the laws of Iowa. Article 1 of its articles of incorporation was as follows:

L. H. Langworthy, H. W. Sanford, Platt Smith, John J. Dyer, J. P. Farley, R. B. Mason, F. V. Goodrich, Robert C. Waples, M. Mobley, G. R. West, Asa Horr, F. S. Jesup, Edward Stimson, Geo. W. Jones, Robert Waller, Robert Schuyler, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, hereby form themselves into a body corporate, under the name and style of the "Dubuque and Pacific Railroad Company," for the purpose of constructing a railroad from some point in the city of Dubuque, thence westerly on the best route towards the Pacific Ocean.

In July, 1856, said company assented to and accepted the aforesaid act.

On the 20th August, 1856, the following letter was addressed by the Commissioner of the General Land Office to the Secretary of State of Iowa:

GENERAL LAND OFFICE, *August 20th*, 1856.

TO GEO. W. MCCLEARY, Esq.,
Secretary of State of Iowa, at Iowa City:

SIR: I have the honor to acknowledge the receipt of your communication of the 12th instant, enclosing a certified copy of the act of the State legislature, approved on the 14th July, 1856, to accept the grant, and to carry into execution the trust conferred upon the State of Iowa by the act of Congress making the grant of lands for railroad pur-

193 poses, approved May 15th, 1856, which has been placed on the regular files in this office.

It is observed that the 6th section of the law directs that it shall be the duty of the governor, after affixing his official signature, to file such map in the Department having control of the public land in Washington, *such location being considered final only so far as to fix the limit and boundary within which lands may be selected.* The part which I have italicized appears to me to conflict directly with the act of Congress, which contemplates that the route shall be definitely fixed. And it is proper that I should, through you, in this early stage of the business, call the attention of the State executive and the companies to the matter, and announce the opinion of this office, so as to prevent unnecessary delay. A route merely for fixing the limits of the grant will not be acted upon here—it must be something real and fixed; the grant cannot be in one place and the actual route in another; although slight variations on the line, such as are unavoidable in the progress of the construction of such works, would be admissible, any material changes of route would be considered as acting in bad faith with the United States, and cannot be tolerated, for such would be a clear violation of the law, which proposes an indemnity to the United States for the lands granted away, by the enhanced value of the alternate sections remaining to the Government near the route of the road; the route must, therefore, be first definitely fixed, as required by the law of Congress, or no title vests.

In the above view it will be expected that the certificate of the governor on the maps returned to this Department will set forth that such maps delineate the routes as definitely fixed; that is, that they are final locations—before they can receive our action.

I am, respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

On the 30th September, 1856, the said Dubuque and Pacific Railroad Company filed in the office of the Secretary of said State of Iowa, a map, having endorsed thereon a certificate, as follows:

OFFICE OF THE DUBUQUE AND PACIFIC RAILROAD CO.,
Dubuque, September 27th, 1856.

It is hereby certified that, in pursuance of the act of the legislative assembly of the State of Iowa, approved July 14th, 1856, entitled "An act to accept of and carry into effect the trust conferred on the State of Iowa by an act of Congress, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15th, 1856—

This map shows the location of the line and route of the Dubuque and Pacific Railroad, from the city of Dubuque to a point on the Missouri River, at Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road, as definitely fixed, in compliance with said act of Congress, and in pursuance of a resolution of the board of directors of said railroad company, passed on the 26th day of May, 1856, directing B. B. Provoost, chief engineer of said road, to locate and definitely fix said route; and that so much of the field-work as is dated on said map since the 26th day of May last, was done in pursuance of said resolution; that so much of the said field-work as is dated

194 on said map anterior to the 26th day of May, was located at the

time indicated by said dates, in pursuance of several resolutions of said board directing said engineer to locate the same.

In testimony whereof The Dubuque and Pacific Railroad Company has hereunto attached its corporate seal, and caused the same to be signed by its president and engineer, at Dubuque, this 27th day of September, A. D. 1856.

[L. S.]

J. P. FARLEY, *President.*
B. B. PROVOOST, *Engineer.*

Attest:

H. P. LEECH,
Sec'y of D. & P. R. R. Co.

Filed Sept. 30th, 1856.

GEO. W. McCLEARY,
Secretary of State.

The land mentioned in the pleadings in this suit is within six miles of the line or route of the road shown on said map or plat. Said route, as shown on said map or plat, is on the general route of the road designated by the act of Congress of 15th May, 1856.

At the time said act of 14th July, 1856, was passed by the general assembly of Iowa, and on said 30th day of September, 1856, no portion of said road had been actually constructed; and no part of said road was completed until May 11, 1857, when the first thirty miles, extending westerly from Dubuque, were opened for business. During the year 1857, eight miles more were completed. The said Dubuque and Pacific Railroad Company did not, nor did The Dubuque and Sioux City Railroad Company have seventy-five miles of said road completed and equipped within three years from the first day of December, 1856, nor thirty miles in addition in each year thereafter.

The said road had not been completed to any point nearer than one hundred and ten miles distant from said land at the time of the passage of the joint resolution of Congress on the 2nd of March, 1861. And it had not been completed to any point nearer than ninety miles distant from said land at the time of the passage of the act of Congress on 12th of July, 1862. The general assembly of the State of Iowa, on the 7th of March, 1860, passed an act extending the time for the completion of 75 miles of The Dubuque and Pacific Railroad *Company.*

Said Dubuque and Pacific Railroad Company, by its president and secretary, presented a petition to Congress on the 19th of May, 1860, "praying that the company may not be divested of the title to lands upon which persons have settled, and compelled to take other lands in lieu of them." Said petition and accompanying documents were printed as Miscellaneous (Senate) Document No. 60, of the first session of 36th Congress. The documents were headed "Documents of The Dubuque and Pacific Railroad Company," and among them was the following official letter from the Commissioner of the General Land Office:

GENERAL LAND OFFICE, *March* 3, 1857.

SIR: In reply to your communication of the 28th ultimo, requesting a statement of the quantity of land which will enure to The Dubuque and Pacific Railroad Company, in Iowa, under the act of Congress approved 15th of May, 1856, subject to the terms and conditions in said act, and the acts of the legislative assembly of said State, the following estimates, carefully prepared at this office, are communicated:

195 1. The length of The Dubuque and Pacific Road, and branch to Tete des Morts, measured on the official map of the route, is 331½ miles, which, at six sections, or 3,840 acres per mile, would make ..... 1,272,960 acres.
Deduct for water ..... 21,920 "

Leaves ..... 1,251,040 "

to which the company would be entitled, if found vacant in the odd-numbered sections within fifteen miles of the road.

2. The estimated quantity of vacant lands in the odd-numbered sections within fifteen miles of the road, liable for selection, (all situated in Iowa,) is as follows:

In the Sioux City district	880,200 acres.
In the Fort Dodge district	415,360 "
In the Dubuque district	11,045 "
Total	1,306,695

which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant above the Raccoon Fork, within the fifteen-mile limits of the railroad grant, and not yet decided.

It appears, therefore, from the above calculations, that The Dubuque and Pacific Railroad Company will obtain their full complement of land under the grant, estimated to cover 1,251,041 acres.

I am, very respectfully, your obedient servant.

THOMAS A. HENDRICKS,
Commissioner.

Hon. BERNHART HENN,
Agent of the State of Iowa and the Railroad Companies,
Washington, D. C.

The Secretary of the Interior has certified and approved to the State of Iowa, under the act of May 15th, 1856, in all 2,770,588.86 acres, of which quantity 1,226,163.40 have been for and on account of the road mentioned in said act of Congress, from the city of Dubuque to a point on the Missouri River near Sioux City; 775,444 acres for the route known as The Iowa Central Air-Line Road; and 481,774 acres for the said road from the city of Davenport to Council Bluffs. The details will appear by the following:

Statement of lands approved to the State of Iowa for railroads, under act approved 15th of May, 1856.

	Land district.	Limit.	Dates of appr'v'l.	No. of acres.
Dubuque and Pacific (now Sioux City) Railroad.	Dubuque	6	Dec. 27, 1858	2,361.08
	Do	15	do	5,901.49
	Fort Dodge	6	do	103,341.61
	Do	15	do	210,722.48
	Sioux City	6	do	344,225.20
	Do	15	do	480,929.21
	Fort Dodge	6	April 7, 1863	56,473.32
	Do	15	do	21,061.91
	Sioux City	6	do	1,382.42
	Fort Dodge	6	Dec. 13, 1864	159.60
				1,226,558.32
Deduct corrections				394.83
Leaves correct'd am't				1,226,163.49

196 *Statement of lands*—Continued.

	Land district.	Limit.	Date of appr'v'l.	No. of acres.
Iowa Central Air-Line (now Cedar Rapids and Missouri River) Railroad.	Dubuque	6	Dec. 27, 1858	1,809.74
	Do	15	do	3,998.57
	F't Des Moines	6	Oct. 24, 1859	12,824.01
	Do	15	do	22,887.74
	Fort Dodge	6	Dec. 27, 1858	576.00
	Do	15	do	59,072.60
	Sioux City	6	do	132,911.18
	Do	15	do	137,641.84
Iowa Central Air-Line (now Cedar Rapids and Missouri River) Railroad.	Council Bluffs	6	do	100,588.07
	Do	15	do	193,377.59
	F't Des Moines	6	April 7, 1863	46,898.73
	Do	15	do	49,387.16
	Fort Dodge	15	do	13,479.96
Total				775,444.19
Mississippi and Missouri Railroad	F't Des Moines	6	March 26, 1859	17,627.16
	Do	15	do	17,162.39
	Council Bluffs	6	Dec. 27, 1858	141,265.07
	Do	15	do	211,366.08
	Chariton	15	do	80.00
	F't Des Moines	6	March 21, 1862	11,194.59
	Do	15	do	20,906.17
	Council Bluffs	6	do	8,708.49
	Do	15	do	17,778.92
	F't Des Moines	6	April 7, 1863	12,071.78
	Do	15	do	23,613.71
Total				481,774.36
Burlington and Missouri River Railroad	F't Des Moines	6	Aug. 22, 1859	18,480.62
	Do	15	do	25,055.18
	Council Bluffs	6	March 23, 1859	71,675.40
	Do	15	do	115,622.04
	Do	6	March 21, 1862	21,740.01
	Do	15	do	28,034.11
	F't Des Moines	15	Feb. 18, 1863	160.00
	Council Bluffs	6	April 7, 1863	1,578.47
	Do	15	do	4,860.51
Total				287,206.34

None of the lands which had been approved to the State of Iowa under act of 8th of August, 1846, for the improvement of the Des Moines River, were embraced in any of the lists of lands approved to the State under the act of 15th of May, 1856, until April 7th, 1863; but some of the lands approved under the railroad grant at that date, had been previously approved to the State of Iowa under said act of 8th of August, 1846, including the lands in question in this suit. The total amount of the lands so approved to the State in aid of the road from Dubuque to Sioux City, which had previously been approved to the State under the act of 8th of August, 1846, was 56,473.32 acres.

The following is a copy of the heading of the list of lands within the six-mile limits of the route of the said railroad from Dubuque to Sioux City, approved the 27th of December, 1858, and of the approval:

"DUBUQUE AND PACIFIC RAILROAD AND BRANCH.

"List of lands in the districts of lands subject to sale at Fort Dodge, within the six-mile limits, granted to the State of Iowa by act of Congress, approved May 15th, 1856, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State,' being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad 'from

the city of Dubuque to a point on the Missouri River near Sioux
197 City, with a branch from the mouth of the Tete des Morts to the nearest point on said road.'"

Within the six-mile limits.

GENERAL LAND OFFICE,
December 23d, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to fourteen, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands, in the alternate sections, designated by odd numbers, for six sections in width on each side of The Dubuque and Pacific Railroad and branch, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony thereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.] THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
December 27th, 1858.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON,
Secretary.

And the following is a copy of the heading and approval of the list of lands within fifteen miles of said route, approved 27th of December, 1858:

"DUBUQUE AND PACIFIC RAILROAD AND BRANCH.

"List of lands in the district of lands subject to sale at Fort Dodge, outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad, from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the Tete des Morts to the nearest point on said road, and in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width, which the United States had 'legally sold or otherwise appropriated, or to which the rights of pre-emption have attached.'"

Between the six and fifteen mile limits:

GENERAL LAND OFFICE,
December 23d, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land
198 Office, do hereby certify that the foregoing, on pages one to twenty-four, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits, under the act of Congress approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State." The said selections being from the lands of the United States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of The Dubuque and Pacific Railroad and branch, and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State enured under said grant; and they are now submitted for the approval of the Secretary of the Interior in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony thereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.] THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
December 27th, 1858.

Approved, subject to the conditions and rights above mentioned.
J. THOMPSON, *Secretary.*

The same form of lists and approvals were used at the other dates specified.

The State of Iowa has not conveyed to said Dubuque and Pacific Railroad Company, nor to The Dubuque and Sioux City Railroad Company the lands mentioned in the pleadings in this suit, nor any of the lands so certified and approved to the State under the act of the 8th August, 1846, unless the said act of the general assembly of 14th July, 1856, shall be held to have conveyed the same; and it has not in any manner attempted to transfer or convey said lands, or any of them, to said Dubuque and Pacific Railroad Company, or any other party or corporation whatever as the successor of said Dubuque and Pacific Railroad Company, unless it be by said act of 14th July, 1856. It has never executed any deed or patent for any of the lands in question in this suit to any party except the Des Moines Navigation and Railroad Company.

On the 28th January, 1857, the general assembly of the State of Iowa passed "An act supplemental to an act entitled 'An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,'" approved May 15th, 1856; which said act of the legislature of Iowa was approved July 14th, 1856.

Section 1 of said act provided "That the said companies may make such disposition of the lands granted by the act to which this is a sup-

plement, by mortgage or deed of trust, as may be deemed proper, for the purpose of securing any amount of construction bonds necessary for the completion of said road."

199 Section 2 was as follows: Any mortgage or deed of trust made upon the lands, roads, or the property of either, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling-stocks; and the purchaser, under a trustee's sale or foreclosure of mortgage, shall have and enjoy all the rights of a purchaser on execution sale: *Provided further*, That nothing contained in this act shall be so construed as in any manner to interfere with, change, or modify the rights of this State or of the United States to any lands granted by Congress to this State, and by this State to certain railroad companies therein, as a security for the completion of said roads, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States to this State, and by the grant by this State to the said companies, or either of said grants."

On the 14th of March, 1857, said Dubuque and Pacific Railroad Company executed a mortgage to Abram S. Hewitt and others, as trustees, for the purpose of securing the payment of bonds which said company proposed to issue.

On the 9th June, 1857, said Dubuque and Pacific Railroad Company also executed to the same trustees a deed of trust purporting to confirm, in all respects, the grant made by the aforesaid mortgage.

The property intended to be embraced was described in said mortgage, and also in said deed of trust, as follows:

All and singular the roadway, stations, depot, land, and other lands appurtenant to said railroad now owned or hereafter to be acquired by said party of the first part, constituting or belonging to the railroad of said first party extending from the city of Dubuque, in the State of Iowa, to a point on the Missouri River at or near Sioux City, in the said State, with a branch from the Tete des Morts to the nearest point on said road; together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, belonging or appurtenant to said railroad, and all the franchises rights, or privileges belonging to said company, or in any way pertaining or appurtenant to said railroad, now existing or hereafter to be acquired.

Also, all right, title, interest, claim, or demand which said party of the first part now has, or hereafter shall acquire, in or to all public lands of the United States granted by act of Congress approved 15th May, 1856, to the State of Iowa, and by the general assembly of said State of Iowa, by act approved July 14th, 1856, granted to the said Dubuque and Pacific Railroad Company, the party of the first part; subject, however, to the terms and conditions of the said acts of Congress and of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property, possession, claim, or demand whatever, at law or in equity, of the said parties of the first part in and to the same, and each and every part or parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or hereafter to be acquired by them, which may not be included in the said grant of public land from the United States, and may not be necessary for the uses and purposes of said railroad and the depots and right of way thereof.

Subsequently the Dubuque and Pacific Railroad Company made default in the conditions of the said mortgage, and proceedings were taken in the district court of Dubuque County, in the State of Iowa,

to foreclose the same; and in said court the following proceedings and decree were had and entered, that is to say:

200 District court, Dubuque County.

MORRIS K. JESUP ET AL., TRUSTEES OF THE Dubuque and Pacific Railroad Company,
vs.
THE DUBUQUE AND PACIFIC RAILROAD CO. et al.
} 512.—Chancery.

SATURDAY, *August 18th*, 1860.

Now come the parties, by Platt Smith, solicitor for complainants, and James McKinlay, solicitor for The Dubuque and Pacific Railroad Company, and submit this case to the court upon bill and answer; and thereupon, on consideration thereof, and by consent of parties, it is ordered, adjudged, and decreed by the court that the complainants have and recover of The Dubuque and Pacific Railroad Company the sum of one million seven hundred and twenty-two thousand five hundred and ten dollars, due and in default upon the mortgages named in the bill

And that if they fail to pay the same within ten days, their right and equity of redemption in and to the properties mortgaged be and forever remain barred and foreclosed, and the right and title thereof shall be absolute in the said complainants.

That the complainants, in taking and acquiring the absolute right and title in said property, namely, The Dubuque and Pacific Railroad, its franchises, right of way, depot-grounds and buildings, rolling stock, lands granted by Congress to aid in constructing said road, remaining undisposed of, and other property mentioned in said mortgages, shall take the same, to be by them conveyed, in conjunction with The Dubuque and Pacific Railroad Company, to The Dubuque and Sioux City Railroad Company, in accordance with the terms and conditions hereinafter set forth.

And The Dubuque and Sioux City Railroad Company shall have and hold the lands which were granted by Congress to the State of Iowa to aid in building said road and branch, and by the State of Iowa to The Dubuque and Pacific Railroad Company, subject to the same rights and obligations, and upon the same terms and conditions as the same were held by The Dubuque and Pacific Railroad Company; it being expressly agreed and understood that The Dubuque and Sioux City Railroad Company is a new company, formed under articles of incorporation drawn up and adopted for the benefit of all parties concerned in The Dubuque and Pacific Railroad Company, whether as stockholders, bondholders, or creditors.

And by consent, as aforesaid, it is ordered, adjudged, and decreed that the bonded indebtedness of The Dubuque and Pacific Railroad Company shall be exchanged, dollar for dollar, with accumulated interest to the date of this decree for preferred stock of The Dubuque and Sioux City Railroad Company, certificates of which shall be issued in form as follows, to wit:

No. ——. —— Preferred shares.

State of Iowa—Dubuque and Sioux City Railroad Company.

This certifies that entitled to preferred shares

of the capital stock of The Dubuque and Sioux City Railroad Company of one hundred dollars each, transferable only by the said , or attorney, on the transfer books of the said company on the surrender of this certificate.

201 The whole amount of preferred shares of the capital stock is two million dollars, which the company have the right to redeem at par at any time.

Dubuque, , 186 .

_____ _____,
President.

_____ _____,
Secretary.

And that the holders of the preferred shares of The Dubuque and Sioux City Railroad Company shall be entitled to receive a dividend on their shares, from year to year, the net earnings of the road, but not in any one year more than seven per cent., unless the earnings make a dividend of over seven per cent. on all the stock, in which case the common and preferred shares shall receive the same dividend.

And that the shareholders of The Dubuque and Pacific Railroad Company shall receive, in exchange for their stock therein, including dividend interest to 1st June, 1860, on the surrender of the same, common stock in The Dubuque and Sioux City Railroad Company to an equal amount, respectively.

And that the creditors of The Dubuque and Pacific Railroad Company who hold securities for the amounts owing them by the company shall have and receive in exchange for such securities, and in satisfaction of the debts, preferred stock in The Dubuque and Sioux City Railroad Company, according to the form above written.

And that the unsecured creditors of The Dubuque and Pacific Railroad Company shall be entitled to receive, in full satisfaction of their claims and demands against the company, common stock of The Dubuque and Sioux City Railroad Company to an amount equal to what may be justly owing to them, respectively.

And that the indebtedness of The Dubuque and Pacific Railroad Company for right of way, for construction of the forty miles of road, for operating expenses, and what may remain due on back pay-rolls and to officers and employés of the company, and for the trust expenses, and on moneys advanced to pay taxes, shall be settled and paid for by The Dubuque and Sioux City Railroad Company; and the officers of last said company are authorized to pay the same in cash or in preferred stock of their company.

And it is further ordered, adjudged, and decreed that this decree shall not absolutely bar, foreclose, or cut off any of the indebtedness aforesaid, but that the holders thereof shall be entitled to have and receive of The Dubuque and Sioux City Railroad Company payment of the same in common stock, preferred stock, or otherwise, according to the nature of their respective claims.

And it is further ordered, adjudged, and decreed, that the complainants shall have right to settle and compromise any claim or claims that may be set up against The Dubuque and Pacific Railroad Company, and that their action therein shall be binding and effectual against The Dubuque and Sioux City Railroad Company, and that it is only such persons as consent to come in under the provisions of this decree that shall be entitled to receive stock in last said company for any claim or demand against The Dubuque and Pacific Railroad Company.

And as to the other defendants, this cause is continued with leave to show cause, if any they have, why this decree should not be held firm and effectual forever. Costs taxed at 450 dollars.

202 District court, Dubuque County.

MORRIS K. JESUP ET AL.
vs.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512.—Chancery.

SATURDAY, *Dec. 22d*, 1860.

In this case, Platt Smith, solicitor for plaintiff, moves that a master be appointed to examine the trustees' accounts, and report to the court thereon, with a view to their final discharge. And the company appears, by James M. McKinley, their solicitor, and makes no objection; thereupon the court appoints David S. Wilson master, for the purpose aforesaid, and to report by the next February term.

District court, Dubuque County

MORRIS K. JESUP ET AL., TRUSTEES, &C.,
vs.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512.—Chancery.

MONDAY, *February 11th*, 1861.

In this case, the plaintiffs filed affidavit of publication and other service of notice, and moved for a default against the defendants other than the Dubuque and Pacific Railroad Company; thereupon James C. Patrick, Bridge, Dygert & Orrell, and Richards, Crumbaugh & Shaw appeared by Bissel, Mills & Shaw; Haskell, Barker & Aldridge appeared by W. T. Barker; Hartfort & Brother, Gage, Dater, & Sloan, and George A. Shannon appeared by Barney, Barker, Chaplin & Dillon; Lane & Bodly appeared by McCeeney; Patrick Nay appeared by Lovell & Williams; The Monticello Bank appeared by W. B. Allison; Patrick O'Conner appeared by Mulkern; and W'm L. Dayton, and James T. Sherman appeared by Wilson, Utley & Doud. All other defendants, being solemnly called, came not, but herein wholly make default.

It is thereupon ordered, considered, and adjudged that the decree of foreclosure heretofore entered against The Dubuque and Pacific Railroad Company be held firm and effectual forever against the defendants, Bank of Old Dominion, Rock Island Coal and Coke Company, and Johnson & Barrows; and they are hereby forever barred and foreclosed of any equity of redemption in The Dubuque and Pacific Railroad land grants and other properties described in said former decree; and that as to the other defendants, who now appear, the cause stands continued.

District court, Dubuque County.

M. K. JESUP, TRUSTEE,
vs.
DUBUQUE AND PACIFIC RAILROAD CO. ET AL. } 512.—Chancery.

SATURDAY, *March 23d*, 1861.

This cause coming up on the motion of D. N. Cooley, a stockholder in

The Dubuque and Pacific Railroad Company, to be made a party
203 defendant, and asking time to set up his claim and answer in said case, said motion being supported by his affidavit, is sustained. It is therefore ordered that said Cooley be made a party defendant, and he is allowed till the 2d day of the next term of this court to answer in this case.

District court, Dubuque County.

MORRIS K. JESUP ET AL., TRUSTEES, &C.
vs.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512.—Chancery.

SATURDAY, *May 24th*, 1860.

It is ordered by the court that this case be referred back to H. S. Jennings, to examine the books of the company concerning the matters testified to by C. H. Booth, and to report whether or no said books show the same facts.

District court, Dubuque County.

M. K. JESUP ET AL., TRUSTEES, &C.,
vs.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512.—Chancery.

WEDNESDAY, *July 9th*, 1862.

In this case, the matter of defence of D. N. Cooley was reported on by H. S. Jennings, master, and exceptions were filed by said Cooley to said report, which exceptions were argued by said Cooley, for himself, and by Platt Smith, for plaintiff; and the same having been duly considered by the court, they are now overruled. Therepon it is ordered, adjudged, and decreed that the report of said H. S. Jennings be confirmed; to which said Cooley excepts at the time.

Plaintiffs move for confi'mation of the report of D. S. Wilson, master, in this case. Thereupon it is now ordered, adjudged, and decreed that the decree of foreclosure heretofore rendered in this case be confirmed as to all parties, and that the report of David S. Wilson, the first master in this case be confirmed; and the title to said railroad, land grant, and other properties, is hereby confirmed in the said Dubuque and Sioux City Railroad Company, according to the terms and conditions set forth in the deed made by The Dubuque and Pacific Railroad Company and said trustees to The Dubuque and Sioux City Railroad Company on 21st August, 1860, a copy of which is annexed to said D. S. Wilson's report.

And it is further ordered, adjudged, and decreed that said Herman Gelpcke, Platt Smith, and W. W. Hamilton be, and they are hereby, discharged from the trust under the mortgage and deed of trust made to secure the construction bonds of said Dubuque and Pacific Railroad Company, and that Morris K. Jesup is likewise discharged from said trust, except as to his accountability for the sum of $2,999 58 mentioned in said report.

And further ordered, adjudged, and decreed that The Dubuque and Sioux City Railroad Company, having accepted the said deed from said

trustees and The Dubuque and Pacific Railroad Company, are entitled to have and obtain from said Jesup payment of said sum of $2,999 58, and interest from the first day of January, 1861, or a proper and satis-
204 factory account of the same, to be ap'roved by this court; and that they, The Dubuque and Sioux City Railroad Company, shall pay the debts owing by said trustees, and interest, as the same appears in the exhibits to D. S. Wilson's report, and any other debts of said trusteee (if such there be) that may hereafter be established in accordance with law.

And it is further ordered, adjudged, and decreed that the secretary of The Dubuque and Sioux City Railroad Company (who is now present in court) shall give notice, by publication for four consecutive weeks in the Dubuque Times and Dubuque Herald, also in the American Railroad Journal, requiring all persons who hold any construction bonds of The Dubuque and Pacific Railroad Company, to present the same within sixty days from the last day of publication at the office of The Dubuque and Sioux City Railroad Company, in Dubuque, for conversion into preferred stock of last said company; otherwise that the company will be under no obligation to convert the same; and that said secretary file proof of such publication for the further action of this court.

And it is further ordered, adjudged, and decreed, that The Dubuque and Sioux City Railroad Company pay all costs of this case.

THE STATE OF IOWA, *Dubuque County, ss:*

I, J. F. Bates, clerk of the district court in and for the county and State aforesaid, do hereby certify that the foregoing is a true, correct, and examined copy and transcript of all the record entries in the foregoing entitled cause, in which Morris K. Jesup et al., trustees, &c., are plaintiffs, and The Dubuque and Pacific Railroad Company et al. are defendants, as fully as the same remain of record in my office.

In testimony where*fore* I have hereunto set my hand and affixed the seal of said district court, at my office in the city of Dubuque, this second day of May, A. D. 1863.

[L. S.] J. F. BATES,

Clerk of the District Court of Dubuque County, Iowa.

After the said decree of foreclosure was entered, the plaintiff, as trustees, and The Dubuque and Pacific Railroad Company united in a conveyance to The Dubuque and Sioux City Railroad Company of all the railroad land grant and other property mentioned in said deeds of trust and decree.

Neither the State of Iowa nor the Des Moines Navigation and Railroad Company, nor the plaintiff in this suit, were parties in the suit or proceedings in which said decree was rendered.

The Dubuque and Sioux City Railroad Company was incorporated under the laws of Iowa by articles of incorporation filed 13th August, 1860.

Article 1, of its articles of incorporation, was as follows:

ARTICLE 1. E. F. Bishop, Morris J. Jesup, Herman Gelpcke, John Lord, Platt Smith, Frederick Schuchardt, Thomas E. Walker, C. H. Booth, J. P. Farley, Richard Bonson, W. W. Hamilton, H. L. Stout, Edward Stimson, Stephen Hempstead, Roswell B. Mason, William G. Stewart, Wilson G. Hunt, Governeur Morris, Lucius P. Starr, and John Kennedy, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, form themselves into a body corporate, under the name and style of The Dubuque

and Sioux City Railroad Company, for the purpose of acquiring
205 all of the rights, privileges, property, and franchises of The Dubuque and Pacific Railroad Company, and to complete and operate said road.

Under said proceedings, decree, and conveyance the said Dubuque and Sioux City Railroad Company claim to have acquired a title to all the lands granted by Congress to Iowa by the act of 15th May, 1856, for the purpose of aiding to construct a railroad "from the city of Dubuque to a point on the Missouri River, near Sioux City;" and they claim thus to have acquired title to every alternate section of land, designated by odd numbers, lying within six miles of the line or route of The Dubuque and Pacific Road, as located, and consequently that they thus acquired title to the lands mentioned in the declaration in this suit.

The said Dubuque and Sioux City Railroad Company has conveyed to other parties portions of the said lands.

The following is a copy of one of said conveyances, embracing the lands mentioned in the declaration of this suit:

Know all men by these presents, that The Dubuque and Sioux City Railroad Company, in consideration of one hundred and seven thousand dollars received by them of George J. Forrest, Frederick C. Gebhard, and William J. Barney, trustees, have bargained and sold, and by these presents do bargain, sell, and convey unto the said George J. Forrest, Frederick C. Gebhard, (both of the city of New York,) and William J. Barney, (of the city of Chicago, Illinois,) trustees as aforesaid, their heirs, assigns, and other legal representatives, forever, the following described lands, to wit:

(Here follows a description by section, town, and range of 106,998.73 acres, including the lands mentioned in the declaration in this suit.)

Reserving to said railroad company the right of way across said lands, with full and free right to locate said railroad thereon, to borrow earth, stone, or gravel, for construction, and to deposit waste earth thereon when necessary: To have and to hold the said lands to the said George J. Forrest, Frederick C. Gebhard, and William J. Barney, trustees, their heirs, assigns, and other legal representatives, in fee-simple, absolute, forever. The said railroad company will warrant and defend said premises to said grantees, their heirs, assigns, and other legal representatives, against the lawful claims of all persons whomsoever.

In testimony the president and secretary of said company sign their names this twelfth day of November, 1863, and the corporate seal is thereto affixed.

[SEAL.]

EDWARD STIMSON, *President.*
JAMES M. McKINLAY, *Secretary.*

The above is recorded on pages 428, 429, and 430 of deed-book E, of the records of Webster County, Iowa.

At the date of said foreclosure, proceedings, and decree, and of the last above-mentioned conveyance, no portion of said railroad mentioned in the act of Congress of the 15th of May, 1856, had been completed to any point within one hundred miles of any portion of the lands mentioned in said conveyance.

Dated——

The evidence on both sides thereupon was closed.

The court charged the jury that the evidence was all clear, and there

was no dispute about the facts. The records of the land depart-
206 ment of the State of Iowa and of the respective corporations all agreed. The case therefore presented a question of law only.

The court further charged that although the defendants may not have had a good title to the land in question at the time they executed their deed to the plaintiff, yet they held at that time a deed of the land from the State of Iowa in fee-simple, and the subsequent resolutions of 1861, and act of Congress of 1862, vested a good title in the State, which immediately enured to the defendants, and, through them, to the plaintiff, so that the plaintiff took a good title to the land.

The court further charged that, by the order of the Commissioner of the General Land Office, made June 1, 1849, and the several proceedings thereupon had appearing in evidence, the lands in question were reserved by competent authority, within the meaning the act of Congress of May, 15th, 1856, and such reservation continued in force until at and after the passage of that act, and the lands in question therefore came within the exception of that act, and were not affected by anything therein contained, and thus the title remained in the United States until the passage by Congress of the resolution of 1861 and the act of 1862. To this portion of the charge the plaintiff's counsel excepted.

The court thereupon directed the jury to find for the defendants; to which direction the plaintiff's counsel excepted.

The jury thereupon found a verdict for the defendants.

And because the said exceptions do not appear by the record of said issue and trial, the said judge who tried the cause, on the prayer of the plaintiff, has set to the bill of exceptions his seal, this 27th day of October, A. D. 1865.

[L. S.] S. NELSON.

(Indorsed:) U. S. circuit court, southern district of New York. Samuel G. Wolcott vs. the Des Moines Navigation and Railroad Company. Bill of exceptions. J. W. Gilbert, attorney. Filed Nov. 3, 1865.

We consent to the within proposed bill of exceptions, and that it be submitted to Judge Nelson for settlement, without notice to us.

W. & C. TRACY & TALLMADGE,
Def't's Att'ys.

OCTOBER 31, 1865.

Supreme Court of the United States, of December term, A. D. 1865.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Samuel G. Wolcott, by Jasper W. Gilbert, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid given was given for The Des Moines Navigation and Railroad Company against the said Samuel G. Wolcott, whereas by the law of the land the said judgment ought to have been given for the said Samuel G. Wol-

cott against the said Des Moines Navigation and Railroad Company, and the said Samuel G. Wolcott prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

207

JASPER W. GILBERT,
Pl'ff's Att'y.

(Indorsed:) Supreme Court of the United States. Samuel G. Wolcott vs. The Des Moines Navigation and Railroad Company. Assignment of errors. J. W. Gilbert, attorney for plaintiff. Filed Nov. 21, '65.

Supreme Court of the United States.

THE DES MOINES NAVIGATION AND RAILROAD Company *ads.* SAMUEL G. WOLCOTT. } In error.

And the said Des Moines Navigation and Railroad Company, by William and Charles Tracy & Tallmadge, their attorneys, freely come here into court, and say that there is no error, either in the record and proceedings aforesaid, nor in the giving of the judgment aforesaid; and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

W. & C. TRACY & TALLMADGE,
Att'ys for Def'ts.

(Indorsed:) Supreme Court of the U. S. The Des Moines Navigation and Railroad Company ads. Samuel G. Wolcott. Joinder in error. W. and C. Tracy & Tallmadge, def't's attorneys. Filed Nov. 21, '65.

Bond for costs.

Circuit court of the United States of America for the southern district of New York, in the second circuit.

SAMUEL G. WOLCOTT, PL'FF IN ERROR, *vs.* THE DES MOINES NAVIGATION AND RAILROAD Company, def't in error.

Know all men by these presents that we, W. Howard Wait, of the city of New York, and Benjamin F. Jervis, of the same place, are held and firmly bound unto the above-named, The Des Moines Navigation and Railroad Company, in the sum of two hundred and fifty dollars, to be paid to the said The Des Moines Navigation and Railroad Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 11th day of November, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas the above-named Samuel G. Wolcott has prosecuted a writ

of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

208 Now, therefore, the condition of this obligation is such, that if the above-named Samuel G. Wolcott shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. HOWARD WAIT.
B. F. JERVIS.

Sealed and delivered, and taken and acknowledged, this 11th day of Nov'r, 1865, before me.

JOHN WHIPPLE, J'R,
Notary Public, N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

W. Howard Wait and Benj'n F. Jervis, being duly sworn, depose and say, each for himself, that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

W. HOWARD WAIT.
B. F. JERVIS.

Sworn to this 11th day of Nov'r, A. D. 1865, before me.

JOHN WHIPPLE,
Notary Public, N. Y.

The above sureties are sufficient, and all exception to them is waived.
[L. S.] W. & C. TRACY, & TALLMADGE, *Att'ys.*

Approved.

CHA'S L. BENEDICT.

Filed this 11th day of Nov'r, 1865.

By the Honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the southern district of New York in the second circuit to the Des Moines Navigation and Railroad Company:

Whereas there was lately issued out of the circuit court of the United States a writ of error directed to the judge of the said circuit court of the United States for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between Samuel G. Wolcott, plaintiff, and The Des Moines Navigation and Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Samuel G. Wolcott; and whereas, for the correction of that error in due manner, the said writ has been issued returnable at the next stated term of the Supreme Court of the United States, to be held at the city of Washington, on the 1st Monday of December next: You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said 1st Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 13th day of November, in the year of our Lord one thousand eight hundred and sixty-five and of the independence of the United States the ninetieth.

CHA'S L. BENEDICT.

209 (Indorsed:) Due and timely service of a copy of the within is hereby admitted.
Dated November 13, 1865.

W. & CHA'S TRACY & TALLMADGE.

Filed November 14, 1865.
Filed in the Supreme Court November 27, 1865.

Supreme Court of the United States. No. 133. The Des Moines Navigation and Railroad Company, plaintiff in error, vs. Calvin Burr. In error to the circuit court of the United States for the southern dist. of New York.

EXHIBIT 40.

THE DES MOINES NAVIGATION & R. R. Co.
versus
CALVIN BURR

UNITED STATES OF AMERICA, *ss;*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Calvin Burr, plaintiff, and The Des Moines Navigation and Railroad Company, defendants, a manifest error hath happened, to the great damage of the said defendants, as is said, and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Samuel Nelson, a justice of the Supreme Court of the United States, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty four, and of the independence of the United States the eighty-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

TRACY & OLMSTEAD,
Attorneys for the said Company, New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

By virtue of the within writ of error, and in obedience thereto, I, Kenneth G. White, clerk of the circuit court of the United States of
210 America for the southern district of New York, in the second circuit, do hereby certify that the following folios, from 1 to 202, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Calvin Burr vs. The Des Moines Navigation and Railroad Company, as the same remain of record, and on file in said office.

In testimony whereof I have hereunto caused the seal of the said court to be affixed, at the city of New York, in the southern district of New York, in the second circuit, this 28th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Filed Nov. 24, 1861.

United States circuit court, southern district of New York.

Pleas before the justices of the United States circuit court for the southern district of New York, at the city hall, of the city of New York, in said district, of the first day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Present, Hon. W'm D. Shipman, justice; Kenneth G. White, esq., clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that, on the 1st day of November, in the year of our Lord one thousand eight hundred and sixty-four, before the justices of the United States circuit court for said southern district of New York, at the city hall, in the city of New York, comes Calvin Burr, by Jasper W. Gilbert, his attorney, and brings into the said court, before the aforesaid justices thereof, now here, his certain declaration against the Des Moines Navigation and Railroad Company, being in custody, &c., of a plea of breach of covenant, which said declaration follows in these words, that is to say:

In the circuit court of the United States for the southern district of New York.

CALVIN BURR
ag'st
THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

CITY AND COUNTY OF NEW YORK. *ss:*

Calvin Burr, a citizen of the State of New York, complains of the Des Moines Navigation and Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, and being in custody, &c., of a plea of breach of covenant, for that whereas heretofore, to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, to wit, at Des Moines, in said State of Iowa, by a cer-

tain deed-poll there and then made by the defendants, which said deed-poll, sealed with the seal of the said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed that the said defendants, in consideration of the sum
211 of seventeen thousand eight hundred and sixty-eight dollars and eighty cents, to them in hand paid by the said plaintiff, did thereby grant and convey to the said plaintiff the following tracts of land in said State of Iowa, to wit, all of section nine, in township eighty-nine, range twenty-eight, and all of section twenty-one, in township eighty-nine, range twenty-eight, containing together twelve hundred and eighty acres; and the said defendants, in and by the said deed-poll, there and then, in consideration of aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take, a good and perfect title in fee to the said tracts of land, and each thereof, as by the said deed poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tracts of land, or either thereof, nor any part thereof, and that the plaintiffs did not then or there, or at any time afterward, by reason of the said deed-poll, or otherwise, receive, obtain, or take any title whatsoever to the said tracts of land, or either thereof, but that the said defendants, to fulfil their said warranty of the title to said lands, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected, and still do neglect, and refuse. Of all which the said defendants had notice, and so the said plaintiff in fact saith that the said defendants, although often requested to, have not kept the said covenants so by these made as aforesaid, but have broken the same, to the damage of the said plaintiff thirty thousand dollars, and thereof the said plaintiff brings his suit, &c.

J. W. GILBERT,
Att'y for Plff.

And the said defendants, by Tracy & Olmsted, their attorneys, come and defend the wrongs and injury, when, &c.; and as to the supposed breach of covenant above assigned and alleged by the said plaintiff, then the said defendants say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them the said defendants, because, they say, that they, the said defendants, before and at the time of the making of the said indenture in the said plaintiff's declaration above mentioned, were seized in fee of the said tracts of land, and did then and there, by the said indenture, convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

And, for a further plea in this behalf, the said defendants, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because, they say, that the said defendants, after making the said indenture in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tracts of land, which

said last mentioned title and estate, by the common law of the State of Iowa, and also by the statutes of the said State of Iowa, did forthwith enure to and vest in the said plaintiff, as the grantee of the said
212 defendants by the said indenture, and that, by means of the premises the said plaintiff, before the commencement of this suit, did receive and take a good and perfect title in fee to the said tracts of land, of all which the said plaintiff had notice, without this, that the said plaintiff suffered any damage by means of anything in the said declaration mentioned; and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

U. S. circuit court, southern d. of N. Y.

CALVIN BURR
ag't
THE DES MOINES NAVIGATION AND RAILROAD Company.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, said plaintiff, ought not, by reason of anything in that plea alleged, to be *bound* from having or maintaining his aforesaid action, because, he says, that the said defendants, at the said time when, &c., were not seized in fee of the said tracts of land, nor did they convey to the said plaintiff any title thereto in manner and form as in that plea in that be*lief* alleged; and this the said plaintiff prays may be enquired of by the country, &c.

And the said defendants do the like.

And the said plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them secondly above pleaded, says that, *in*, the said plaintiff, *or* not, by reason of anything in that plea alleged; to be *bound* from having or maintaining his aforesaid action thereof, because, he says, that the said defendants did not, at the said time when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatsoever in manner and form as in that plea alleged; and this the said plaintiff pray' may be enquired of by the country, &c.

And the said defendants do the like.

J. W. GILBERT,
Pl'ff Att'y.

Therefore, the issues above joined are ordered by the circuit court of the United States for the southern district of New York to be tried at a stated term of said court appointed to be held at the City Hall, of the city of New York, on the day of , in the year of our Lord one thousand eight hundred and sixty-four, and place last above named, before Hon. Shipman, one of the justices of said court, according to the form of the statute in said case made and provided; came as well the above-named plaintiff as the above-named defendant, by their respective attorneys above mentioned; and the jurors of jury summoned to try the said issue, being called, also came, who, to speak the truth of the matters aforesaid being chosen, tried, and sworn, say upon their oath, that the said defendant is guilty of the several breaches of covenant above laid to its charge in manner and form as the said plaintiff hath above in that behalf alleged against the said defendant; and the said jury assess the damages of the said plaintiff by reason of the premises,

over and above his costs and charges by him in and *above* his suit in this behalf expended, to the sum of twenty-four thousand two hundred and fifty-five $\frac{76}{100}$ dollars, and for these costs and charges to six cents.

213 Therefore it is considered that the said plaintiff do recover against the said defendant his said damages, costs, and charges by the jurors aforesaid, in form aforesaid assessed, and also thirty-eight $\frac{35}{100}$ dollars for his said costs and charges by the said court now here adjudged of increase to said plaintiff, and with his assent, which said damages, costs, and charges in the whole amount to twenty-four thousand two hundred and ninety-four $\frac{11}{100}$ dollars.

And the said defendent, in mercy, &c.

Judgment signed this 21st November, 1864.

R. E. STILWELL,
Dep. Clerk.

Filed Nov. 2, 1864.

U. S. circuit court, S. D. N. York.

THE DES MOINES NAVIGATION AND RAILROAD Company
ads.
CALVIN BURR.

This action was tried at the term of the court held at the city of New York on the first, second, and third days of November, one thousand eight hundred and sixty-four, before the Honorable William D. Shipman, judge, with a jury.

The counsel for the plaintiff, to sustain the issues on his part, gave evidence that the plaintiff was a citizen of the State of New York, and the defendants were a corporation created by the State of Iowa, and also put in evidence a deed, of which the following is a copy, viz:

For and in consideration of seventeen thousand eight hundred and sixty-eight and $\frac{80}{100}$ dollars The Des Moines Navigation and Railroad Company, a corporation organized under the laws of the State of Iowa, doth hereby grant and convey to Calvin Burr, of the city and State of New York, the following tracts of land in the State of Iowa, to wit: in Webster County, all of section nine in township eighty-nine, range twenty-eight, containing six hundred and forty acres; also all of section twenty-one in township eighty-nine, range twenty-eight, being a total of twelve hundred and eighty acres; and the said Des Moines Navigation and Railroad Company doth hereby warrant the title against all persons whomsoever.

In witness whereof R. S. Burrows, president, and W'm B. Welles, treasurer of said company, having been hereunto duly authorized, hereunto set hand and affixed the seal of said company this fifteenth day of November, in the year one thousand eight hundred and fifty-eight.

R. S. BURROWS, *President.*
[SEAL.] W. B. WELLES, *Treasurer.*

STATE OF NEW YORK,
County of New York, ss:

I certfy that I, the subscriber, am a commissioner for Iowa in and for the State of New York; that, on the seventeenth day of February,

1859, personally appeared before me R. S. Burrows, president, and W'm B. Welles, treasurer, personally known by me to be the identical persons whose names are affixed to the within deed as grantors,
214 and acknowledged the instrument to be their voluntary act and deed. Given under my hand and official seal on the day and date above-written.

[SEAL.] JA'S C. PATTERSON,
Commissioner of Iowa in New York.

The plaintiff's counsel also gave evidence that the consideration money mentioned in said deed, with interest from its date until the trial of this action, amounted to $24.254 96, and he claimed to recover said consideration-money and interest.

The counsel for the defendants, to sustain the issue on their part, put in evidence the act of Congress entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the Des Moines River, in said Territory," passed Augu't 8, 1846; also gave in evidence that the grant made by said act of Congress was fully accepted by the legislature of the State of Iowa, for the purpose therein expressed, and everything was done on the part of the State of Iowa necessary to perfect its title under said act, and that agents afterwards were duly appointed by the governor of said State, who selected the sections designated by odd numbers throughout the whole extent of the grant, such selections embracing all the sections of the public lands designated by odd numbers then remaining unsold and not otherwise disposed of, incumbered, or appropriated, lying in said Territory or State of Iowa, within a strip five miles in width on each side of the river Des Moines, from its mouth to its source at or above the northern boundary of said State; that the said selections by odd numbers was approved by the Secretary of the Treasury of the United States; that the lands mentioned in the declaration in this suit are a part of the lands so selected and approved, and are within the limit of what was the Territory of Iowa, on the 8th of August, 1846, and are within five miles of the Des Moines River, but are situated above the Raccoon Fork of said river, and do not lie between said Raccoon Fork and the mouth of said river; that the general assembly of Iowa, on the 24th *fo* February, 1847, provided for the election of a board of public works, consisting of a president, a secretary, and treasurer, and committed to such board the whole subject of receiving and managing the said lands and providing for the construction of the improvement mentioned in said act of Congress and that said board was duly elected August 2, 1847, and was organized and went into operation September 22d, 1847. To the admissibility of each of which facts the plaintiff's counsel objected; but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a letter written by the Commissioner of the General Land Office to said board of public works, on the 23d of Februˆary, 1848. The plaintiff's counsel objected to the admissibility of said letter; but the court overruled the objection and admitted the same, and it was put in evidence, being as follows:

GENERAL LAND OFFICE, *Feb'y* 33, 1849.

SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received, and would have received an earlier response but for the erroneous and defective sur-

veys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that river, under the act of the 8th of August, 1846.

As these surveys have been corrected, action will be had on
215 these selections as soon as possible, and when approved they will be certified to you.

It is not usual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned, and these will, of course, be transmitted as they can be prepared.

All the aid that this office can give the board of public works in the discharge of its duties will be cheerfully rendered, and, if it is possible to procure copies of the reports of the Topographical Bureau of the examinations heretofore made of the Des Moines River, it will afford me pleasure to do so, and forward them to you.

A question has arisen as to the extent of the grant made to Iowa by the act of 8th August, 1846, and the opinion of this office has been requested on that point.

By the terms of the law the grant is of an equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered or appropriated, in a strip of five miles in width on each side of the river, to be selected within said Territory &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River throughout the whole extent of that river, within the limits of Iowa.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

CHARLES CORKERY, Esq.,
Secretary of Board of Public Works, Fairfield, Iowa.

The defendant's counsel gave in evidence that, without any notice of change of opinion, a proclamation was issued June 19, 1848, signed by the President of the United States, and countersigned by the Commissioner of the General Land Office, ordering into the market some of the lands lying above the Raccoon Fork, which would belong to said State according to the rule laid down in said letter of February 23, 1848, the sale to take place October 16, 1848. To the admissibility of each of which facts the plaintiff's counsel objected; but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a letter written by said board of public works, through its secretary, to the Commissioner of the General Land Office, dated September 18, 1848. The plaintiff's counsel objected to the admissibility of said letter, but the court overruled the objection and admitted the same, and the same was read in evidence, being as follows:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: The attention of this office has been called to the proclamation of the President of the United States, bearing date the 19th of June last, for the sale of lands in Iowa, by which I perceive that lands donated to this State for the improvement of the Des Moines River, are

to be offered for sale at Iowa City, on Monday the 16th October next. These lands are situated above the Raccoon Fork of the Des Moines River, in townships Nos. 79, 80; range Nos. 25, 26, &c., and a sale by the United States will be in conflict with your opinion expressed to me in your letter of the 23d of February last, in which you say that
216 the State is entitled to the alternate sections within five miles of the Des Moines River throughout the whole extent of that river within the limits of Iowa.

Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be greatly embarrassed by any impediments to her favorable prospects in this regard. We believe that the fact of having those lands embraced in the proclamation was an oversight, without any intention to curtail the resources of the State, and that it will be corrected on being discovered.

Very respectfully, your obedient servant,

CHARLES CORKERY.

Hon. R. M. YOUNG,
Commissioner, G. L. O.

The defendant's counsel offered in evidence a protest of the same date, to the admissibilty of which the plaintiff's counsel objected; but the court overruled the objection and admitted the same, and it was received as evidence, being as follows:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, 18th September, 1848.

SIR: I enclose you a copy of a letter which I have transmitted by this day's mail to the Commissioner of the General Land Office, and take this opportunity of protesting against the sale of the lands therein referred to.

This protest is based not only upon the act of Congress, donating lands to the State of Iowa for the improvement of the Des Moines River, but also on the decision of the Commissioner of the General Land Office, bearing date 23d February, 1848, in words, as follows:

A question has arisen as to the extent of the grant made to Iowa, by the act of the 8th of August, 1846, and the opinion of this office has been requested on that point. By the terms of the law the grant is of one equal moiety, in alternate sections of the public lands remaining unsold and not otherwise disposed of, incumbered, or appropriated, in a strip five miles in width on each side of the said river, to be selected within said Territory, &c., and the proceeds are to be applied in the improvement of the navigation of said river from its mouth to the Raccoon Fork. Hence the State is entitled to the alternate sections within five miles of the Des Moines River throughout the whole extent of that river within the limits of Iowa.

As this board has had no information that this opinion has been rescinded, we are of the opinion that he will inform you on the subject within the two weeks prescribed for the continuance of the sale.

Respectfully,

CHARLES CORKERY,
Sec'y B. P. W.

C. NEELY, Esq., *Register.*

The defendant's counsel offered in evidence a letter written by the

Senators and Representatives in Congress, from the State of Iowa, to the Secretary of the Treasury, dated January 8, 1849, to the admissibility of which the plaintiff's counsel objected; but the court overruled the objection and admitted the letter, and it was read in evidence, being as follows:

217 CONGRESS, *January 8th*, 1849.

SIR: During the last summer we were much surprised to see lands proclaimed for sale by the President of the United States, which had been declared by the General Land Office and considered by the people of Iowa as the property of the State, under the act of 8th of August, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory.

On enquiring of the Commissioner of the General Land Office as to the reasons for this course, he informed us that he had changed his original opinion as to the extent of this grant, and was now inclined to think that it was limited to the Raccoon Fork; but no official promulgation of this opinion has yet been given except negatively by proclaiming the lands as above-mentioned.

The granting clause in the act of August 8th, 1846, is so clear that we are constrained by a due regard to the interest of the people and State of Iowa to ask your consideration of the subject, and we are further encouraged to take this course as the Commissioner, we are assured, will be pleased to extend to the State the full complement of the grant, if the law, in your opinion, should bear that construction.

This act of 8th August, 1846, is found in the acts of the first session 29th Congress, page 115.

The first part of the first section designates the object for which the grant was made, to wit: There shall be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding the said Territory to improve the navigation of the Des Moines from its mouth to the Raccoon Fork, so called, in said Territory.

The next clause describes the grant and its extent, to wit, one equal moiety, in alternate sections, of the public lands (remaining unsold and not otherwise disposed of, incumbered, or appropriated) in a strip five miles in width on each side of the river.

This language is so plain that the extent of the grant is a self-evident proposition, and requires no argument; but the idea is entertained that the improvement governs the extent of the grant. This construction, we beg leave to state, has never obtained. Grants have frequently been made for seats of government, county sites, and the erection of public buildings, but in no case has it been contended that the object of the grant governs the extent of it; otherwise the act passed by Congress on the same day with that now in consideration, (page 140,) to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin, must be constructed as running the whole length of the Wisconsin River also, as the limitation of that grant to the Fox River, the lakes through which it passes, and the canal, is not more specific than the terms used to designate the grant for the improvement of the Des Moines River.

The reason for this extension of the grant to Iowa above the terminus of the improvement is, moreover, manifest, because near the mouth of the river that improvement will be very expensive, and there the grant does not attach because the lands on the Missouri side of the

river below Sullivan's line are in Missouri, and those on the Iowa side are the property of individuals; and further, most of the lands some distance up the Des Moines, have been sold by the Government, and as the grant is only of the unsold and unappropriated lands in the alternate sections, the only equivalent for those which had been
218 sold that could be given are the vacant lands far in the interior from the Mississippi, and hence the terms used in the law.

As the terms of the act, then, are so clear and explicit, and as the reasons for the extension of the grant as provided by that act are so obvious, we respectfully request in our own behalf and in behalf of the State and her citizens, who look with that confidence heretofore so fully justified, that you will not withhold the munificence of Congress, and thus cripple this young and rising State in her first great enterprise, and thus involve her in inextricable debt and difficulty.

We earnestly request that you will give the necessary instructions for the selections and approval of these lands along the entire route of the Des Moines, as contemplated by the law, as fast as the surveys are made and returned, and that the lands which belong to the State, which have been inadvertently offered and which remain unsold, may be withdrawn from the market and certified to the State also.

We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEORGE W. JONES.
SHEPHERD LEFFLER.
W'M THOMPSON.

Hon. R. J. WALKER,
Secretary of the Treasury.

The defendant's counsel offered in evidence the response of the Secretary of the Treasury, dated March 2, 1849, to the admissibility of which the plaintiff's counsel objected; but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

TREASURY DEPARTMENT, *March* 2, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress "granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," approved 8th August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river from its source to its mouth, but not to lands on the river in the State of Missouri.

I have transmitted your communication and accompanying papers with a copy of this letter to the Commissioner of the General Land Office.

I have the honor, &c.,

R. J. WALKER,
Sec. of Treasury.

Messrs. A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON.

The defendant's counsel gave in evidence that the Secretary of the Treasury, on the same day, transmitted a copy of his letter of that date to the Commissioner of the General Land Office, and accompanied it with an order of the same date, which also the defendant's counsel

offered in evidence. The plaintiff's counsel objected to the admissibility of such fact and such order; but the court overruled the objection and admitted the same, and said order was also read in evidence, being as follows:

219 TREASURY DEPARTMENT, *March* 2, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date, to members in both Houses of Congress from the State of Iowa, with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER.

R. M. YOUNG, *Commissioner.*

The defendant's counsel offered in evidence a communication from the Commissioner of the General Land Office, dated June 1, 1849, to the admissibility of which plaintiff's counsel objected; but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

GENERAL LAND OFFICE, *June* 1, 1849.

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Fork, as this office had previously decided, you are hereby directed to withhold from sale all lands situated on the odd-numbered sections within five miles on each side of that river above the Raccoon Fork. Inclosed I send you a diagram, upon which the State selections above that point are colored yellow.

I have also to request that you will make out a list, showing the sales and locations which have been made within these selections, as it is designed to endeavor to procure some legislative action on the part of Congress, confirmatory of them. The diagram inclosed extends 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

R. M. YOUNG, *Commissioner.*

REGISTER AND RECEIVER,
Iowa City, Iowa.

The defendant's counsel offered in evidence a letter from the Commissioner of the General Land Office, dated December 19th, 1849. The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection, and admitted the same, and it was read in evidence, being as follows:

GENERAL LAND OFFICE, *December 19th*, 1849.

SIR: A letter has been received at this office from the Hon. A. C. Dodge and the Hon. Geo. W. Jones, enclosing one from you to the former, dated the 30th ulto., requesting that you may be furnished with a list of the Des Moines River grant above the Raccoon Fork. In reply I have to state that said list has not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not com-

pleted on the books of this office until recently. Said list is now in the course of preparation, and will be ready for transmission at an early day. In the latter part of your letter you say the lists heretofore forwarded of land below the fork have been furnished the secretary
220 of state instead of the board, who are the rightful and only agents of the State for said land.

In the absence of evidence showing the right of another to receive confirmed lists of State grants it is usual to send them to the secretary of state. Such is the case at present in relation to this grant. If, however, you will furnish this office with evidence as to your right as secretary of the board of public works to receive said lists, and to correspond with this office in relation thereto, they will hereafter receive the desired direction.

I am, sir, your obedient servant,

J. BUTTERFIELD, *Commissioner.*

JESSE WILLIAMS, Esq.,
Iowa City, Iowa.

The defendant's counsel gave in evidence that, on the 11th January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior showing the amount of land which had been granted to the several States for internal improvements, and that the amount charged to Iowa in said report is 825,078 acres, and that the following note is contained in said report in reference to said lands so charged to Iowa, as follows: "This amount, in accordance with the decision of the Secretary of the Treasury of the 2d of March, (1849,) eighteen hundred and forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres." And that, on the 13th March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading: "No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2, 1849."

The plaintiff's counsel objected to the admissibility of each of said facts, but the court overruled the objection and received the evidence. The defendant's counsel put in evidence the following decision of the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
Washington, April 6th, 1850.

SIR: Having considered the question submitted to me connected with the claim of the State of Iowa to select, under the act of August 8th, 1846, lands for the improvement of the Des Moines River, I am clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Fork without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8th, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law not having been carried into effect by him, his opinion, merely expressed, is open for reversion.

The lists of selections and other papers submitted with your letter of the 13th ult., are herewith returned.

221 As Congress is now in session and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

The defendant's counsel gave in evidence that, on the 14th April 1850, the Senators and Representatives from Iowa protested against said decision, and appealed from it to the President of the United States, and the President referred the matter to the Attorney General, Mr. Reverdy Johnson. The Attorney General, on the 19th July, 1850, made his report on the matter so referred, giving it fully, in his opinion, that, by the terms of the grant itself, it extended along the Des Moines River up to its very source; that before the said opinion was promulgated, or any further action was taken upon this matter, the question was submitted to a new Attorney General, Mr. Crittenden, who, on the 30th June, 1851, decided that, in his opinion, the grant did not extend above the Raccoon Fork, and that the Secretary of the Interior, (Mr. A. H. H. Stuart,) at first, July 26, 1851, concurred in Mr. Crittenden's opinion, but afterwards consented to bring the whole matter before the President and Cabinet, and after its consideration there, a decision was made which is indicated in the letter of Mr. Stuart, dated October 29, 1851, which letter the defendant's counsel offered in evidence. The plaintiff's counsel objected to the admissibility of each of said facts and of said letter, but the court overruled the objection and received the evidence, and said letter was read in evidence, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, October 29, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month. I have reconsidered and carefully revised my decision of the 26th of July last, and in doing so find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country, and although my own opinion on the true construction of the grant is unchanged, yet, in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinion of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections, without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary.

You will please, therefore, as soon as may be practicable, submit for my approval such lists as have been prepared, and proceed to report for like approval lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork as far as the surveys have progressed, or may hereafter be completed and returned.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

222 The defendant's counsel gave in evidence that, on the following day, namely, October 30, 1851, three lists of lands were prepared in the General Land Office, the purposes of which, as stated in the heading, being as follows: "List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that such grant extended to the north boundary of the State." "List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant and one of those extending it above the fork." "List No. 3, showing the vacant lands subject to the claim of the State;" and that the third of said lists, on being presented to the Secretary of the Interior, received his approval, with an explanatory statement, and the defendant's counsel offered said approval and statement in evidence. The plaintiff's counsel objected to the admissibility of the said several facts and of said approval and statement; but the court overruled the objection, and received the evidence and said note, and said note was read in evidence, being as follows:

"DEPARTMENT OF THE INTERIOR,
"*October 30th*, 1851.

"The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known at the Land Office by the agents of the State; it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that this grant extended above the Raccoon Fork.

"ALEX. H. H. STUART,
"*Secretary.*"

The defendant's counsel gave in evidence that the following amounts of lands were approved and certified at the following times to the State of Iowa under the grant of August 8th, 1846, all lying above the Raccoon Fork, viz:

October 30th, 1851	214,391.58 acres.
March 10th, 1852	143,908.36 acres.
December 17th, 1853	33,142.43 acres.
December 30th, 1853	12,813.51 acres.
	404,255.89

And that among such lands so certified and approved were the lands mentioned in the declaration in this suit, and that the following is the heading of the list which was approved by the Secretary of the Interior on the 17th of December, 1853, together with the terms of approval. A similar heading and approval was appended to the list approved on the 30th of the same month: "A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River, so far as the surveys have progressed,
223 falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter

of the 2d of March, 1849, and of the Secretary of the Interior of the 29th of October, 1851, which have not heretofore been approved;" and that said list was approved in these words:

"DEPARTMENT OF THE INTERIOR,
"*December 17th*, 1853.

"The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

"R. MCCLELLAND,
"*Secretary.*"

To the admissibility of each of which facts the plaintiff's counsel objected; but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a letter written by the Secretary of the Interior, August 23d, 1852. The plaintiff's counsel objected to the admissibility of such letter; but the court overruled the objection and admitted the same, and the same was read in evidence, being as following:

DEPARTMENT OF THE INTERIOR,
Washington, August 23d, 1852.

SIR: I have examined the question involved in the appeal of Honorable A. C. Dodge, George W. Jones, and Bernhart Henn, of Iowa, from the judgment of the Commissioner of the General Land Office in relation to their application for the issue of patents on the sales and locations of portions of the odd-numbered sections along the Des Moines River, above the Raccoon Fork, which had been made prior to the receipt by the district land office of Mr. Secretary Walker's decision of the 2d March, 1849, and have to state that, as I approved the selections above the Raccoon Fork with the express understanding that the approval should not convey to the State any title to tracts which might have been sold or otherwise disposed of prior to receipt of Mr. Walker's decision, the issuing of patents on the sales and locations in question is in perfect accordance with the views expressed in my letter to the Commissioner of the 29th October last, and the terms of approval of the selections of the following day.

I am, sir, very respectfully, your obedient servant,
ALEX. H. H. STUART, *Sec'y.*

The ACTING COMMISSIONER OF THE GENERAL LAND OFFICE.

GENERAL LAND OFFICE, *January 6th*, 1864.

SIR: Herewith I enclose a copy of a list of lands falling to the State of Iowa under the act of 8th of August, 1846, selected by the State under the eighth section of the act of 4th September, 1841, and approved before the grant for the improvement of the Des Moines River was adjusted as far as the township embraced by the lists, which was approved by the Secretary of the Interior on the 30th ultimo. The quantity of land thus approved under the act of 8th of August, 1846, is twelve thousand eight hundred and thirteen and fifty-one one-hundredths of an acre, (12,813.51.) These lands were selected on the 20th of July, 1850, and embraced by lists Nos. 49 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere.

224 Be pleased to acknowledge the receipt of this communication.
I am, very respectfully, your obedient servant,
JOHN WILSON,
Commissioner.

THOMAS H. BENTON, J'r, Esq'r.,
Superintendent Public Instruction, Iowa City, Iowa.

The defendant's counsel offered in evidence a letter written by the Commissioner of the General Land Office, January 6, 1854. The plaintiff's counsel objected to the admissibility thereof; but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

The defendant's counsel gave in evidence that the lands given by the United States to Iowa on its becoming a State, by the general act of Congress passed September, 1841, giving 500,000 acres to each new State on its coming into the Union, were devoted by the State of Iowa to educational purposes; that 12,813.51 acres had been selected under that act from among the sections of odd numbers lying within five miles of the Des Moines River and above the Raccoon Fork, which same lands, according to the construction of the act of August 8, 1846, prevailing at the date of said letter of January 6, 1854, had been previously appropriated by Congress to the Des Moines River improvement, and that, upon such fact coming to the knowledge of the General Land Office, notice was given to the State superintendent of public instruction that the State was entitled to select an equal quantity of land elsewhere in lieu of what had been erroneously so selected for school purposes as part of the State's five hundred thousand acres. The plaintiff's counsel objected to the admissibility of each said fact; but the court overruled the objection and received the evidence.

The defendant's counsel gave evidence that, on the 21 March, 1856, the Commissioner of the General Land Office decided that the grant by the act of August 8, 1846, did not extend above the Raccoon Fork, and thereupon the matter was brought before the Secretary of the Interior, and by him was referred to the Attorney General, Mr. Cushing, who delivered an extended opinion thereon, and the defendant's counsel offered said opinion in evidence. The plaintiff's counsel objected to the admissibility of each of said facts and of said opinion; but the court overruled the objection and received the evidence, and the defendant's counsel read said opinion in evidence, the material parts of which are as follows:

Extract from opinion of Att'y Gen'l Cushing.

In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did, without the questions involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be reversed by his successor only on the ground of mistake in a matter of fact, or the discovery and production of ma-

225 terial new testimony. (Mr. Chittenden's opinion of Dec. 28, 1852, MS. See also Bank of Metropolis vs. The United States, 15 Peters, page 400; ex parte Randolph, 2 Brocken., p. 470.)

If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final as respects the United States. But have you erred in continuing to follow the line of action which your predecessor had prescribed, and which the Commissioner of Public Lands assumed as settled in presenting to you for approval lists made out on the premises of the subsisting decision of Mr. Stuart? And if you erred (inadvertently) in thus approving selections made by the State above the Raccoon Fork, shall you now stop and change the rule of action which Mr. Stuart has prescribed to the Commissioner? The answer to these questions is not included in the preceding conclusions. It is one thing to undo an act done, and quite another thing to cease to persevere in a previous line of action as to acts of a continuous nature.

It might with much plausibility be argued that while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so what Mr. Stuart did, though final as to lands actually approved, was but a precedent, when a new list comes up and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination as respects any other lands in the same right claimed by the State, and that in executing the same law you are to execute it according to your own understanding of its force and effect. That may be so, and yet the contingency is not exactly of the application of a precedent to a new case, for the grant to Iowa is one thing, although it be composed of parts or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Raccoon Fork, and he proceeded to execute, and did execute, that decision in part, and the true question is of the completion of the execution by you of what had been partially executed by Mr. Stuart. I think it must be a clear case of manifest illegality in the work commenced and half executed by one Secretary to justify the abandonment of it by his successor. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions of Mr. Walker and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stuart. In my judgment, it is not for the good of the public service, while it is prejudicial and sometimes grossly unjust to private interests concerned, for the executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that upon better reflection at the outset a different decision would have been rendered. To indulge in such oscillation of action under the influence of ordinary causes of perturbation is not seemly on the part of the Government.

In the present case of lands above the Raccoon Fork claimable by the State within its limits, twenty-six fifty-sixth parts (nearly half) the United States have already recognized as belonging to the State. I think you may, if you choose, will consider that a determination of the question proper to be acquiesced in by you as a settled fact of administration. * * * * I advise, therefore, that you propose to the State of Iowa and its assigns to acquiesce in and accept the decision of Mr. Stuart as final, and to approve selections accordingly, provided the

226 State or its assigns will themselves agree to acquiesce in and accept that decision as final. If they refuse to treat that decision as final, they cannot expect you to do so. They should be bound if you are. If they consent to enter into satisfactory stipulations of contract to that effect, you can with safety award to them the residue of the claim up to the northern boundary of the State.

The defendant's counsel offered in evidence a communication from the Secretary of the Interior, dated June 9, 1856.

The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection and admitted the same, and the same was read in evidence, being as follows:

DEPARTMENT OF THE INTERIOR,
June 9th, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th of March, and inclosed therewith several letters and arguments which have been received here since the date of your report. Having submitted the subject to the Attorney General for his opinion upon the questions involved, I enclose a copy of such opinions, furnished me under date of the 29th ult., and also a letter, under date of the 5th instant, from the Hon. Reverdy Johnson, the attorney for the claimants under grant, in regard to the conditions upon which subsequent approvals up to the limits of the State of Iowa are recommended by the Attorney General to be made.

In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney General as contained in the paragraph, near the close of such opinion, beginning with the words, "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with, "you can with safety award to them the residue of the claim up to the northern boundary of the State."

It will be perceived from the indorsement of Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department, but no further action will be taken until the parties are heard from on this point.

In the certificate of approval hereafter prepared for my signature on any lists submitted, the fact should be stated that, the approval being based on the prior action of the Department, and upon the ground that the grant is to be confirmed to the northern boundary of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part in this limit, and on abandonment of all claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

Respectfully, your obedient servant,

R. MCCLELLAND,
Secretary.

To the Hon. THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

227 The defendant's counsel gave evidence that application to the Secretary of the Interior subsequently was made by Mr. R. Johnson, for the issue of patents for lands which had been certified and approved to the State of Iowa under the act of August 8th, 1846, and that the Secretary made reply thereto in writing November 10, 1856, and the defendant's counsel offered to read said reply in evidence. The plaintiff's counsel objected to the admissibility of said facts and said reply; but the court overruled the objection and admitted the evidence, and the defendant's counsel read said reply in evidence, being as follows:

DEPARTMENT OF THE INTERIOR,
November 10th, 1856.

SIR: Having duly considered the subject brought to my attention personally a few days since, and specially referred to in your letter of this date, I have not been able to satisfy myself that the Department has any power to issue patents where the law not only does not authorize it to be done, but provides another mode for the passing of the title to the lands in question; and the practice having been in accordance with this view of the absence of authority, I deem it proper to adhere to it.

In the opinion of the Attorney General of the 29th May last, in the Des Moines River case, it is so stated: In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account—no more right where a settlement is in favor of a third party than where it is in favor of the United States. Where a thing is decided and done by the head of a Department acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact on the discovery and production of material new testimony. (Mr. Crittenden's opinion of Dec. 25th, 1852, U. S. See also Bank of Metropolis vs. United States, 15 Peters, p. 400; ex parte Randolph, 2 Brocken, p. 470.) If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final as respects the United States.

In the foregoing views of the Attorney General I have concurred, and for the reason that the acts of approval by Mr. Stuart and myself have divested the United States of the title, I can see still further ground to decline issuing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment like selections not yet approved.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

To Hon. R. JOHNSON,
Baltimore, Md.

The defendant's counsel gave in evidence that among the lands approved and certified to the State of Iowa under said act of 8th August, 1846, on or prior to the 30th Dec., 1853, were the lands mentioned in the

declaration in this suit; that no lands have been so certified and
228 approved under said act since December 30, 1853; that all the lands which were so certified and approved to the State of Iowa, were by the General Land Office at Washington, always thereafter, (up to the time when the decisions of the Supreme Court of the United States on the construction of the act of August 8th, 1846, was rendered at the December term of 1859–1860,) reserved from sale or pre-emption, and were by said Land Office considered and held, and on its files and maps were indicated, as appropriated to the special purpose of satisfying the said grant of 8th August, 1846, and as having passed to the State under said grant, and the acts of the Government thereunder; and that, after the making of said grant by the act of Congress of August 8, 1846, the State proceeded from time to time, as in said act authorized, to sell and dispose of said lands, applying the proceeds to the improvement of the Des Moines River, as contemplated in said act, and on 9th June, 1854, the State, by its authorized agents, made a contract with the said defendants, the Des Moines Navigation and Railroad Company, in and by which the said company agreed to finish said improvement, as contemplated in said act of Congress, and specified in said contract, and to expend for that purpose all necessary sums, to the amount of $1,300 00, and in consideration of such contract and expenditure, and in payment for the same, the State sold and agreed to convey to said company, from time to time, and in the manner provided by said act of Congress, the whole balance of the lands which had been certified and approved to the State under said act, and which then remained unsold, and all other land which should be thereafter certified and approved to the State of Iowa under said act; that among the lands thus sold to said company were the lands mentioned in the declaration in this suit; that after the making of said contract the said company proceeded with the work upon said improvement, and as the said improvement progressed, and in accordance with said act of Congress, the State, from time to time, by its regular and authorized officer, issued to said company in payment for work done by it upon said improvement, and in pursuance of the aforesaid contract, sundry certificates, in form and substance as follows:

OFFICE REGISTER OF THE
DES MOINES RIVER IMPROVEMENT,
Ottumwa, May 14, 1855.

I certify that the following lands were sold by me on this day of to the Des Moines Navigation and Railroad Company, in pursuance of the contracts and agreements with the said company for the construction of the said Des Moines River improvement, to wit:

(Here follows a long list of lands set forth specifically by section, township, and range, together with the number of acres in each tract, respectively, including the lands mentioned in the declaration in this suit.)

(Signed) GEORGE GILLESPIE, *Register, &c.*

That the said George Gillespie was at the said dates register of the Des Moines improvement, and was the proper person to transfer said lands and issue the said certificates, and that the General Land Office decided, in 1856, not to certify any more lands to the State under the grant of 8th August, 1846, and that thereupon the said defendants suspended work upon said improvement. To the admissibility of each of

which facts the plaintiff's counsel objected, but the court overruled the objection, and received the evidence.

229 The defendant's counsel offered in evidence a joint resolution of the general assembly of the State of Iowa, passed March 22d, 1858. The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection, and received the evidence, and the same was read in evidence, being as follows:

"Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen, and do now exist between the State of Iowa and said company, and it being conceived to be to the interests of all parties concerned to have said matters and all matters and things between said company and the State of Iowa settled and adjusted: Now, therefore—

"*Be it resolved by the general assembly of the State of Iowa*, That for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water-rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company, and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement, and the State of Iowa shall, by its proper officers, certify and convey to the said company all lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company or its assignees shall have right to all of said lands as herein granted to them as fully as the State of Iowa could have, under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges, under and by virtue of said grant, entirely released from any claim, by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are $25{,}487\frac{87}{100}$ acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

"And it is further agreed that said company release and convey to the State of Iowa or its representatives, all materials of every kind and description, prepared for or intended for the construction of locks or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature, except as herein provided, for constructing or repairing the work on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material pre-

pared up to this date, beyond the percentage retained from the contractors under their agreements, and the said company shall be
230 discharged from all liability for the claims of the officers of the State for services or salaries.

"The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement, as fast as he may require the same to liquidate existing liabilities against said Des Moines River improvement, on thirty days' notice given to said company, at their office, in the city of New York, and any bonds or certificates of indebtedness against said improvement, not exceeding in amount the sum of $11,000, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: *Provided*, That no liabilities, assumed by the State in this contract, shall be a charge against the State in her sovereign capacity; but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant: *And provided also*, That if Congress shall *p*remit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all the liabilities, as aforesaid, against said improvement, and the completion of such locks and dams on the Des Moines River, as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided further*, That if the said Des Moines Navigation and Railroad Company shall ratify and accept the propositions for a contract by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto."

The defendant's counsel gave in evidence that the Des Moines Navigation and Railroad Company ratified and accepted the propositions for a contract, in said resolutions contained, in the manner, and within the time therein provided for; that the company paid to the State the sum of $20,000 in cash, and released and conveyed to the State the dredge-boat and materials in the resolution mentioned, which were of the cash value of more than $100,000, and in all respects on its part complied with the terms of settlement expressed in said resolution. To the admissibility of each of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a patent or deed executed May 18, 1858. The plaintiff's counsel objected to the admissibility thereof; but the court overruled the objection and the said deed or patent was read in evidence, being as follows:

This indenture, made this 18th day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, and in pursuance of a joint resolu-

tion of the general assembly of the State of Iowa, approved the
231 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company the following-described lands, to wit: All lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold and conveyed, or agreed to be sold or conveyed by the State, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company or its assigns shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have, under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges, under and by virtue of said grant, entirely released from any claim by or through said company. And it is understood that, among the lands excepted and not granted by the State to said company are 25,487.87 acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

To have and to hold the above-described lands and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors, and assigns forever, in fee simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the Stae of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State,
By JNO. M. DAVIS,
Deputy.

This is to certify that the foregoing deed was received from the governor, June 10th, 1858, and recorded in Des Moines River records, book A, pages 45 and 46, June 18th, 1852, [62.]

T. S. PARVIN,
Register of State Land Office,
By D. S. WARREN,
Deputy.

The defendant's counsel gave in evidence that the State of Iowa caused said deed or patent to be duly recorded in Iowa, and a duplicate or copy of it to be filed in the office of the Commissioner of the General Land Office at Washington, with a list of the lands intended to be conveyed thereby, amounting to 213,483.39 acres, including the two sections mentioned in the complaint in this suit. To the admissibility of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence another deed or patent, executed May 3d, 1858.

232 The plaintiff's counsel objected to the admissibility thereof; but the court overruled the objection, and said deed or patent was read in evidence, being as follows:

This indenture, made this third day of May, 1858, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company, for the improvement of the Des Moines River, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company the following referred to and described lands, to wit:

(Here follows a description of several thousand acres of land, set forth specifically by section, township, and range, and including the lands mentioned in the declaration in this suit.)

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns, forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

[SEAL.] (Signed) RALPH P. LOWE.

By the governor:

(Signed) ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor June 10, 1858, and recorded in Des Moines River records, book A, pages 41, 42, 43, and 44, June 18, 1858.

(Signed) T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Deputy.*

The defendant's counsel gave in evidence that the decision of the Supreme Court of the United States, interpreting the act of August 8, 1846, (in the case of Litchfield v. The Dubuque & Co., reported in 23 Howard, 66,) was pronouced at the December term of 1859–1860; to the admissibility of which fact the plaintiff's counsel objected; but the court overruled the objection and received the evidence.

The defendant's counsel read in evidence the joint resolutions of the Congress of the United States, passed March 2, 1861, and the act of Congress passed July 12, 1862, the plaintiff's counsel objecting to the admissibility thereof; but the court overruling the objection and receiving said resolution and act in evidence.

The defendant's counsel put in evidence from the statutes of Iowa, section 2210 of the code of Iowa, revision of 1860, in these words:

"Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee."

233 The plaintiff's counsel gave in evidence the act of Congress passed May 15, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State;" and also an act of the general assembly of the State of Iowa, passed July 14, 1856, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856." The plaintiff also gave in evidence that said last-mentioned act was duly published in the papers therein mentioned. To the admissibility of which said two acts, and of such fact of publication, the defendant's counsel in time objected; but the court overruled the objections and received the evidence, and the defendant's counsel excepted to such decision.

The plaintiff's counsel also gave in evidence the articles of incorporation of the Dubuque and Pacific Railroad Company, to the admissibility of which the defendant's counsel objected, but the court overruled the objection and received the evidence, to which decision the defendant's counsel objected. The said articles were then read in evidence, the first article whereof being as follows:

"L. H. Langworthy, H. W. Sandford, Platt Smith, John J. Dyer, J. P. Farley, R. B. Mason, F. V. Goodrich, Robert C. Waples, M. Mobley, G. R. West, Asa Horr, F. S. Jessup, Edward Stimson, George W. Jones, Robert Waller, Robert Schuyler, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, hereby form themselves into a body corporate, under the name and style of The Dubuque and Pacific Railroad Company, for the purpose of constructing a railroad from some point in the city of Dubuque, thence westerly on the best route towards the Pacific Ocean."

The plaintiff's counsel offered in evidence certain resolutions of said Dubuque and Pacific Railroad Company, passed in July, 1856, and filed with the secretary of state of Iowa, to the admissibility of which the defendant's counsel objected, but the court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision. Said resolutions were therefore read in evidence, being as follows:

Resolved, That the Dubuque and Pacific Railroad Company hereby assent to and accept the provisions of an act enacted by the general assembly of the State of Iowa, and approved July , 1856, entitled "An act to accept of the grant to carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856."

Resolved, That the president and secretary of The Dubuque and Pacific Railroad Company be, and they hereby are, required to affix their signatures to the above resolutions and have the same filed in the office of the secretary of the State of Iowa forthwith.

[SEAL.] J. P. FARLEY, *President.*

Attest:

H. P. LEACH, *Secretary of D. & P. R. R. Co.*

The defendant's counsel offered in evidence a letter from the Acting Commissioner of the General Land Office, dated August 20th, 1856.

The plaintiff's counsel objected to the admissibility of said letter,

234 but the court overruled the objection and received the evidence. The letter was then read in evidence, being as follows

GENERAL LAND OFFICE, *August 20th*, 1856.

To GEO. W. MCCLEARY, Esq.,
Secretary of the State of Iowa, at Iowa City.

SIR: I have the honor to acknowledge the receipt of your communication of the 12th inst., inclosing a certified copy of the act of the State legislature approved on the 14th of July, 1856, to accept the grant and to carry into execution the trust conferred upon the State of Iowa by the act of Congress making the grant of lands for railroad purposes, approved May 15th, 1856, which has been placed on the regular files in this office.

It is observed that the 6th section of the law directs that it shall be the duty of the governor, after affixing his official signature, to file such map in the Department having control of the public land, in Washington, *such location being considered final only so far as to fix the limits and boundary within which lands may be selected.* The part which I have italicised appears to me to conflict directly with the act of Congress which contemplates that the route shall be "definitely fixed," and it is proper that I should, through you, in this early stage of the business, call attention of the State executive and the companies to the matter, and announce the opinion of this office, so as to prevent unnecessary delay. A route merely for fixing the limits of the grant, will not be acted upon here. It must be something real and fixed. The grant cannot be in one place and the actual route in another. Although slight variations on the line, such as are unavoidable in the progress of the construction of such works would be admissible, any material changes of route would be considered as acting in bad faith with the United States, and cannot be tolerated, for such would be a clear violation of the law which proposes an indemnity to the United States for the lands granted away, by the enhanced value of the alternate sections remaining to the Government near the route of the road. The route must, therefore, be first "definitely fixed," as required by the law of Congress, or no title vests.

In the above view it will be expected that the certificate of the governor on the maps returned to this Department will set forth that such maps delineate the routes as "definitely fixed;" that is, that they are final locations, before they can receive our action.

I am, respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

The plaintiff's counsel offered in evidence a certificate of The Dubuque Railroad Company, dated September 27, 1856, and filed with the secretary of the State of Iowa, September 30, 1856, to the admissibility of which the defendant's counsel objected. The court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision. The said certificate was then read in evidence, being as follows:

OFFICE OF THE DUBUQUE AND PACIFIC RAILROAD CO.,
Dubuque, September 27th, 1856.

It is hereby certified that in pursuance of the act of the legislative assembly of the State of Iowa, approved July 14th, 1856, entitled
235 "An act to accept of and carry into effect the trust conferred on

the State of Iowa by an act of Congress entitled 'An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State,' approved May 15, 1856," this map shows the location of the line and route of the Dubuque and Pacific Railroad, from the city of Dubuque to a point on the Missouri River, at Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road, as definitely fixed, in compliance with said act of Congress, and in pursuance of a resolution of the board of directors of said railroad company, passed on the 36th day of May, 1865, directing B. B. Provost, chief *of* engineer of said road, to locate and definitely fix said route; and that so much of the field-work as is dated in said map since the 26th day of May last, was done in pursuance of said resolution; that so much of the field-work as is dated on said map anterior to the 26th day of May last, was located at the time indicated by said dates, in pursuance of several resolutions of said board directing said engineer to locate the same.

In testimony whereof The Dubuque and Pacific Railroad Company has hereunto attached its corporate seal, and caused the same to [L. S.] be signed by its president and engineer, at Dubuque, this 27th day of September, A. D. 1856.

J. P. FARLEY, *President.*
B. B. PROVOST, *Engineer.*

Filed Sept. 30th, 1856.

GEO. W. McCLEARY,
Secretary of State.

Attest:

H. P. LEACH,
Sec'y of D. & P. R. R. Co.

The plaintiff's counsel gave in evidence that the land mentioned in the declaration in this suit lies within six miles of the line or route of the road shown on the map or plot thereof, mentioned in said certificate, and that said route or line shown on said map or plot is on the general route of the road designated by the act of Congress of May 15, 1856; to the admissibility of which facts the defendant's (in time) counsel objected, but the court overruled the objection, and received the evidence, and the defendant's counsel excepted to such decision.

The defendant's counsel gave evidence that, at the time of the passing of said Iowa statute of July 14, 1856, and on the filing of said certificate on the 30th of September, 1856, no portion of the railroad of the Dubuque and Pacific Railroad Company had been actually constructed, and no part of said road was completed until May 11th, 1857, when the first thirty miles, extending westerly from Dubuque, were opened for business, and during the year 1857, eight miles more were completed, and said Dubuque and Pacific Railroad Company did not have 75 miles of said road completed and equipped within three years from the first day of December, 1856, or thirty miles in addition in each year thereafter, as required by the aforesaid act of the general assembly of Iowa, passed 14th July, 1856; that said railroad had not been completed to any point nearer than one hundred and ten miles distant from said land at the time of the passage of the joint resolution of Congress on 2d March, 1861, and it had not been completed to any point nearer than ninety miles distant from said land at the time of the passage of
236 the act of Congress, 12th July, 1862; that the general assembly of the State of Iowa, on the 7th March, 1860, passed an act as follows:

"An act extending the time for completion of 75 miles of road by the Dubuque and Pacific Railroad Company.

"Whereas it has been represented that the Dubuque and Pacific Railroad Company did not complete seventy-five continuous miles of said road by the first day of December last, as required by the 8th section of the act approved fourteenth July, A. D. 1856, commonly called the land grant act, but have since completed the same: Therefore—

"SEC. 1. *Be it enacted by the general assembly of the State of Iowa,* That said subsequent completion of said seventy-five miles shall be deemed a substantial compliance with the provisions of said section by said company."

That, on the 26th of March, 1860, the said general assembly passed another act, as follows.

"An act entitled an act declaratory of the meaning of an act for extending the time of completion of seventy five miles of road by the Dubuque and Pacific Railroad Company, approved 7th March, 1860.

"Whereas the first section of the said act above recited reads as follows:

"'*Be it enacted by the general assembly of the State of Iowa,* That said subsequent completion of said seventy-five miles shall be deemed a substantial compliance with the provisions of said section by said company:' Now, therefore—

"SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That said first section shall be considered and is hereby declared to mean that said completion of said seventy-five miles by said company, shall be deemed to be a substantial compliance by said company with that portion of said 8th section which required seventy-five miles of said road to be finished by the first day of December last."

That the Secretary of Interior has certified and approved to the State of Iowa, under the act of May 15, 1856, in all $2{,}540{,}024\frac{64}{100}$ acres; of which quantity $1{,}147{,}481\frac{7}{100}$ acres have been for and on account of the road mentioned in said act of Congress, from the city of Dubuque to a point on the Missouri River, near Sioux City; and that the State of Iowa has not conveyed to said Dubuque and Pacific Railroad Company the lands mentioned in the declaration in this suit, or any of the lands so certified and approved to the State under the act of 8th August, 1846, by any deed or patent, nor by any other means, unless said act of the general assembly of 14th July 1856, should be deemed a conveyance thereof; and it has not, in any manner, transferred or conveyed, or attempted to transfer or convey, said lands, or any of them, to said Dubuque and Pacific Railroad Company, or to any other part' whatever, except to the Des Moines Navigation and Railroad Company, unless it be by said act of 14th July, 1856. To the admissibility of which several acts the plantiff's counsel objected, but the court overruled the objection admitted the evidence.

The plaintiff's counsel gave in evidence an act of the general assembly of the State of Iowa, passed January 28th, 1857, entitled as follows:

An act supplementary to an act entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of
237 Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856;" which said act of the legislature of Iowa, was approved July 14th, 1856.

The defendant's counsel objected to the admissibility of said act; but the court overruled the objection, and received the evidence, and said act was read in evidence, and the defendant's counsel excepted to such decision.

The plaintiffs counsel offered in evidence a certain mortgage, executed March 14th, 1857, by said Dubuque and Pacific Railroad Company, to Abram S. Hewit and others, trustees, to secure the payment of $12,000,000 of bonds, which said company proposed to issue, and a deed of trust executed by said company June 9th, 1859, to said trustees, confirming the grant made by said mortgage. The defendant's counsel objected to the admissibility of said mortgage and said deed; but the court overruled the objections, and received them as evidence, and the defendant's counsel excepted to such decision. The said mortgage and deed were then read in evidence, the description of the premises in both being as follows:

"Also, all right, title, interest, claim, or demand which said party of the first part now has or hereafter shall acquire, in or to all public lands of the United States, granted by act of Congress, approved 15th of May, 1856, to the State of Iowa, and by the general assembly of said State of Iowa, by act approved July 14th, 1856, granted to said Dubuque and Pacific Railroad Company, the party of the first part, subject, however, to the terms and conditions of the said acts of Congress, and of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property, possession, claim, or demand whatever, at law or in equity, of the said parties of the first part, in and to the same and each and every part or parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or hereafter to be acquired by them, which may not be included in the said grant of public land from the United States, and may not be necessary for the uses and purposes of said railroad, and the depots and right of way thereof." And the plaintiff's counsel also read in evidence, from said deed of trust, the following passages, viz:

"This indenture is made for the further purpose of insuring to the party of the second part, not only all the title that said railroad company now has, but all the title which may hereafter be acquired, or which may be perfected or certified to said company; and said party of the first part hereby covenants and agrees to forever warrant and defend the title of said lands to the parties of the second part, their successors and assigns, against the lawful claims and demands of all persons whomsoever; also, that the said lands are free from all incumbrances done or suffered by the party of the first part, except the mortgage before recited, executed to the party of the second part on the 14th day of March last, for the purpose of securing the identical construction bonds herein mentioned; that said party of the first part now has all the title and right which was granted by Congress to the State of Iowa, and by said State to the party of the first part.

"And said party of the first part further covenants and represents that said party has full and ample power, and lawful authority, according to legal usage in the State of Iowa and the United States, to make, execute, and deliver this deed and said mortgage, heretofore executed on the 14th day of March last, for the purpose of securing said construction bonds; and that, according to said laws and usage, all subsequent rights which may be perfected to said lands will enure, by estoppel, to the sole use and benefit of the party of the second part; that this right and lawful authority exist by express legislation, as well as by usage and legal construction, as may be seen by reference

238

"An act extending the time for completion of 75 miles of road by the Dubuque and Pacific Railroad Company.

"Whereas it has been represented that the Dubuque and Pacific Railroad Company did not complete seventy-five continuous miles of said road by the first day of December last, as required by the 8th section of the act approved fourteenth July, A. D. 1856, commonly called the land grant act, but have since completed the same: Therefore—

"SEC. 1. *Be it enacted by the general assembly of the State of Iowa,* That said subsequent completion of said seventy-five miles shall be deemed a substantial compliance with the provisions of said section by said company."

That, on the 26th of March, 1860, the said general assembly passed another act, as follows.

"An act entitled an act declaratory of the meaning of an act for extending the time of completion of seventy five miles of road by the Dubuque and Pacific Railroad Company, approved 7th March, 1860.

"Whereas the first section of the said act above recited reads as follows:

"'*Be it enacted by the general assembly of the State of Iowa,* That said subsequent completion of said seventy-five miles shall be deemed a substantial compliance with the provisions of said section by said company:' Now, therefore—

"SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That said first section shall be considered and is hereby declared to mean that said completion of said seventy-five miles by said company, shall be deemed to be a substantial compliance by said company with that portion of said 8th section which required seventy-five miles of said road to be finished by the first day of December last."

That the Secretary of Interior has certified and approved to the State of Iowa, under the act of May 15, 1856, in all $2{,}540{,}024\frac{64}{100}$ acres; of which quantity $1{,}147{,}481\frac{7}{100}$ acres have been for and on account of the road mentioned in said act of Congress, from the city of Dubuque to a point on the Missouri River, near Sioux City; and that the State of Iowa has not conveyed to said Dubuque and Pacific Railroad Company the lands mentioned in the declaration in this suit, or any of the lands so certified and approved to the State under the act of 8th August, 1846, by any deed or patent, nor by any other means, unless said act of the general assembly of 14th July 1856, should be deemed a conveyance thereof; and it has not, in any manner, transferred or conveyed, or attempted to transfer or convey, said lands, or any of them, to said Dubuque and Pacific Railroad Company, or to any other part' whatever, except to the Des Moines Navigation and Railroad Company, unless it be by said act of 14th July, 1856. To the admissibility of which several acts the plantiff's counsel objected, but the court overruled the objection admitted the evidence.

The plaintiff's counsel gave in evidence an act of the general assembly of the State of Iowa, passed January 28th, 1857, entitled as follows:

An act supplementary to an act entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of
237 Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856;" which said act of the legislature of Iowa, was approved July 14th, 1856.

The defendant's counsel objected to the admissibility of said act; but the court overruled the objection, and received the evidence, and said act was read in evidence, and the defendant's counsel excepted to such decision.

The plaintiffs counsel offered in evidence a certain mortgage, executed March 14th, 1857, by said Dubuque and Pacific Railroad Company, to Abram S. Hewit and others, trustees, to secure the payment of $12,000,000 of bonds, which said company proposed to issue, and a deed of trust executed by said company June 9th, 1859, to said trustees, confirming the grant made by said mortgage. The defendant's counsel objected to the admissibility of said mortgage and said deed; but the court overruled the objections, and received them as evidence, and the defendant's counsel excepted to such decision. The said mortgage and deed were then read in evidence, the description of the premises in both being as follows:

"Also, all right, title, interest, claim, or demand which said party of the first part now has or hereafter shall acquire, in or to all public lands of the United States, granted by act of Congress, approved 15th of May, 1856, to the State of Iowa, and by the general assembly of said State of Iowa, by act approved July 14th, 1856, granted to said Dubuque and Pacific Railroad Company, the party of the first part, subject, however, to the terms and conditions of the said acts of Congress, and of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property, possession, claim, or demand whatever, at law or in equity, of the said parties of the first part, in and to the same and each and every part or parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or hereafter to be acquired by them, which may not be included in the said grant of public land from the United States, and may not be necessary for the uses and purposes of said railroad, and the depots and right of way thereof." And the plaintiff's counsel also read in evidence, from said deed of trust, the following passages, viz:

"This indenture is made for the further purpose of insuring to the party of the second part, not only all the title that said railroad company now has, but all the title which may hereafter be acquired, or which may be perfected or certified to said company; and said party of the first part hereby covenants and agrees to forever warrant and defend the title of said lands to the parties of the second part, their successors and assigns, against the lawful claims and demands of all persons whomsoever; also, that the said lands are free from all incumbrances done or suffered by the party of the first part, except the mortgage before recited, executed to the party of the second part on the 14th day of March last, for the purpose of securing the identical construction bonds herein mentioned; that said party of the first part now has all the title and right which was granted by Congress to the State of Iowa, and by said State to the party of the first part.

"And said party of the first part further covenants and represents that said party has full and ample power, and lawful authority, according to legal usage in the State of Iowa and the United States, to make, execute, and deliver this deed and said mortgage, heretofore executed on the 14th day of March last, for the purpose of securing said construction bonds; and that, according to said laws and usage, all sub-
238 sequent rights which may be perfected to said lands will enure, by estoppel, to the sole use and benefit of the party of the second part; that this right and lawful authority exist by express legislation, as well as by usage and legal construction, as may be seen by reference

to the several acts of the general assembly of the State of Iowa, in this respect made and provided.

"And said party of the first part further covenants and represents that all the laws, usages, and acts of the general assembly made and provided or bearing relation to this subject shall be considered as part and parcel of this contract and deed, the same as though such laws and usages were herein set forth at large. And further, that it is a well-settled principle of law in the United States of America and the State of Iowa, that such laws and usages do enter into and become a part of the contract, without reciting or referring to the same; and that no subsequent legislature can pass any act that will abrogate, repeal, or impair the rights of the party of second part."

The plaintiffs gave in evidence that The Dubuque and Pacific Railroad Company made default in the conditions of said mortgage, and the same was foreclosed, and upon foreclosure sale, all the rights which passed by said mortgage were, before March 2d, 1861, sold to and purchased by The Dubuque and Sioux City Railroad Company, a corporation organized under the laws of Iowa. To the admissibility of which facts the defendants in time objected; but the court overruled the objection and received the evidence, and the defendants' counsel excepted to such decision.

The plaintiff's counsel offered in evidence the articles of incorporation of said last-mentioned railroad company, as filed in the office of the secretary of the State of Iowa, August 13th, 1860. The defendant objected to the admissability thereof; but the court overruled the objection and received the evidence, and the defendants' counsel excepted to such decision. The said articles were read in evidence, the first article thereof being as follows:

"ARTICLE I. E. F. Bishop, Morris K. Jessup, Herman Gelpeke, John Lord, Platt Smith, Frederick Schuchardt, Thomas E. Walker, C. H. Booth, J. P. Farley, Richard Bonson, W. W. Hamilton, H. L. Stout, Edward Stimson, Stephen Hempstead, Roswell B. Mason, William G. Stewart, Wilson E. Hunt, Governeur Morris, Lucius P. Starr, and John Kennedy, and their associates, and all such persons as shall hereafter become the stockholders in the company hereby incorporated, form themselves into a body corporate, under the name and style of the Dubuque and Sioux City Railroad Company, for the purpose of acquiring all of the rights, privileges, property, and franchises of the Dubuque and Pacific Railroad Company, and to complete and operate said road."

The plaintiff also gave in evidence that the said Dubuque and Sioux City Railroad Company claimed to have acquired by said mortgage, foreclosure and sale, a title to all the lands mentioned in the act of Congress of May 15th, 1856, in connection with the construction of a railroad "from the city of Dubuque, to a point on the Missouri River, near Sioux City," including every alternate section, designated by odd numbers lying within six miles of the line or road *of the line or road* of the Dubuque and Pacific Railroad, as located, and including the lands described in the declaration in this suit. To the admissibility of which facts the defendants' counsel in time objected; but the court overruled the objection and received the evidence, and the defendants' counsel excepted to such decision.

The plaintiff's counsel gave in evidence that the said company
239 last named had conveyed to other parties portions of said lands, including the lands described in the declaration in this suit. One of the deeds given in such conveyance being as follows:

(To the admissibility of which facts and said deed the defendants' counsel in time objected; but the court overruled the objection and received the evidence, and the defendants' counsel excepted to such decision.)

Copy of deed from Dubuque and Sioux City Railroad Company to Fritz Gelpcke, Edward Stimson, John Lord, and Schuckhardt and Gephardt, in book D, Webster County (Iowa) records, page 695, filed for record June 22d, 1861.

Know all men by these presents that The Dubuque and Sioux City Railroad Company, of the State of Iowa, for and in consideration of the sum of twenty thousand dollars to them in hand paid by Fritz Gelpcke, and the further sum of ten thousand dollars paid by Edward Stimson, and the further sum of ten thousand dollars paid by John Lord, and the further sum of three thousand five hundred dollars paid by Schuckhar't and Gephart, the receipt of which several sums of money is hereby acknowledged, doth hereby grant, bargain, and sell, alien, enfeoff, and convey unto the said Edward Stimson, his heirs and assigns forever, the lands mentioned and described as follows:

Part of	Sec.	Town.	Range.	Acres.
All	1	88	28	790.40
All	3	88	28	719.04
All	5	88	28	692.31
N. E. ¼ and E. ½	7	88	28	240
All	9	88	28	640
All except lot 7	7	89	28	541.43
E. ½ and N. W. ¼	9	89	28	480
All	11	89	28	640
W. ½ N. E. ¼; W. ½; W. ½ S. E. ¼, and S. E. ¼ S. E. ¼	13	89	28	520
All	15	89	28	640
S. E. ¼	17	89	28	160
All	5	88	29	733.08
All	7	88	29	612.48
All	1	89	29	601.90
All	3	89	29	627.90
All	5	89	29	611.26
E. ½	7	89	29	320
All	9	89	29	1,280
All	11	89	29	
N. E. ¼	13	89	29	640
W. ½ and S. E ¼	15	89	29	
S. Ward, E. ½	21	89	28	480
All	23	89	28	1,920
All	25	89	28	
All	27	89	28	
All	31	89	28	657.34
All	33	89	28	1,280
All	35	89	28	
N. E. ¼ N. E. ¼	1	88	29	61.61
Lots 1, 7, and 8	1	88	29	94.97
S. E. S. E., W. ½ S. E., and W. ½ S. W.	1	88	29	200
All	3	88	29	727.92
All	17	89	29	640
N. E. of N. E.	19	89	29	40
All	21	89	29	1,280
All	23	89	29	
S. E. ¼ and W. ½	25	89	29	480
All	27	89	29	640
E. ½ and N. W., E. ½ S. W.	29	89	29	560
All	33	89	29	1,280
All	35	89	29	
				21,750.95

Reserving, however, to the said company the right of way for
240 their road across said lands, with full and free power to locate and construct the same: To have and to hold the above-granted premises to the said Edward Stimson, his heirs and assigns, to his and

their use and behoof, and to the use and behoof of the said Fritz Gelpcke, John Lord, and Schuckhar't, and Gephart, and their heirs and assigns forever, in the proportion in which they have paid the purchase price of said lands above mentioned.

Witness the hands of Herman Gelpcke, president, and James McKinlay, secretary of the Dubuque and Sioux City Railroad Company, and the corporate seal of said company hereto affixed this eleventh day of February, A. D. 1861. And the said company doth hereby covenant to warrant and defend the said premises unto the said Edward Stimson, and to his heirs and assigns forever, against the lawful claims of all persons whomsoever.

[L. S.] HERMAN GELPCKE,
President.
JAMES McKINLAY,
Secretary.

Certificate of acknowledgment before--
DAVID A. McKINLAY,
Notary Public, Dubuque.

The defendants' counsel also gave in evidence that, at the date of the conveyance last above contained, namely, February 11th, 1861, no portion of the railroad from Dubuque to the Missouri River, near Sioux City, mentioned in the act of Congress of May 15th, 1856, had been completed to any point within one hundred and ten miles of any part of the lands mentioned in the deed last above given in the declaration in this suit. To the admissibility of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The foregoing evidence having put in, both parties rested.

The defendants requested the court to charge and instruct the jury that the defendants were entitled to a verdict, but the court refused so to charge and instruct, and the defendants' counsel excepted to such refusal.

The plaintiff's counsel requested the court to charge and instruct the jury that the plaintiffs were entitled to their verdict, and to damages to the amount of the consideration money mentioned in the declaration, with interest from the date of the deed there mentioned.

The defendants' counsel, among other things, requested the court to charge the jury—

First. That upon all the evidence before them, the lands in *in* question, before the passage of the act of May 15th, 1856, had been reserved to the United States by competent authority and were included in the reservation or exception contained in the first section of said act.

Second. That the act of May 15th, 1856, was not an absolute grant conferring a title in presenti on the State.

Third. That no title could vest in the State under that until the route of the railroad which it should aid was definitely fixed by permanent location, and total or partial construction of the railroad; and no such definite fixing of the route had taken place as to give operation to the grant by said act.

Fourth. That the Iowa statute of July, 1856, in respect of the
241 location of the railroads therein mentioned, was not authorized by the act of Congress of May 15th, 1856, nor in conformity thereto

and has no effect to vest, or aid in vesting, a title in the railroad companies.

Fifth. That no railroad having been completed to any point within twenty miles of the land mentioned in the declaration of this suit before the passage of the resolution of Congress March 2d, 1861, or the act of Congress of July 12th, 1862, the title could not have passed to any railroad company before the passage of said resolution or said act.

Sixth. That the act of May 15th, 1856, conferred on the State a naked power in trust, which Congress might at any time revoke, and the same was revoked by the resolution of March 2d, 1861, and act of July 12th, 1862.

Seventh. That a removal of the reservation of the lands in question, subsequent to the passage of the act of May 15th, 1856, by the decision of the Supreme Court or by any other means, could not come to the grantees under that act, or confer any title to such reserved lands.

Eighth. If a title in said lands vested in the State of Iowa by virtue of the act of May 15th, 1856, then the subsequent conveyances by the State vested the title in the defendants as purchasers, and the defendants are not bound to show an application by the State of the proceeds of the lands to the purposes mentioned in said act.

The court refused to charge as proposed in said several propositions otherwise than is contained below, and the defendants excepted to such refusal.

The court then delivered to the jury the following charge:

GENTLEMEN OF THE JURY: You will see that the conclusions to which I have come upon the questions raised by the evidence in this case dispose of all except one, and that relative to the damages only, which I will submit to you. I therefore charge you—

1. That no title to the lands in question passed to the Territory of Iowa by virtue of the act of Congress approved August 8th, 1846, these lands lying above the Raccoon Fork of the Des Moines River. This point has been already settled by the Supreme Court of the United States in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, (23 of How. Rep., 66.)

2. That none of the acts of the executive officers of the United States which have been proved, nor all of them taken together, had any effect to extend the operation of the act of August 8th, 1846, over these lands, nor in any manner to confer a title to them, either at law, or, strictly speaking, in equity, upon the Territory or State of Iowa, or upon these defendants. This result follows from the decision of the Supreme Court already cited.

3. That these acts of the executive officers of the United States, proved and relied on in this case, did not reserve to the United States these lands for the purpose of aiding in any other objects of internal improvements, or for any other purpose whatsoever, and therefore they are not drawn within the proviso of the act of May 15th, 1856. These official acts were not prompted or guided by any such intention. Those of them which proceeded upon the idea that these lands were embraced in the grant of August 8th, 1846, were mere errors arising out of a misconstruction of the terms of that grant. They were, no doubt, made in good faith, and for the purpose of formally fixing and defining rights supposed to have been already granted by Congress. But as these acts, according to the case, (23d of How., 66,) exceeded
the grant made by Congress, they were void. These acts were
242 intended as acts of transfer, and not acts of reservation. To now

attribute to them the effect of having reserved these lands to the United States, that is, set them apart for the use of the Government itself, would be reserving the natural consequences originally intended to flow from them. Such a construction of these acts, I think, would be arbitrary, and neither warranted by any circumstances presented by the evidence, or by the settled rules of law. All these acts, therefore, left the lands in question in the same status in which they had always remained. That status was unchanged, not only in fact but in contemplation of law. The lands were neither sold, granted, nor reserved to the United States for any purpose, but remained in the great body of the public domain, subject to the control of Congress and to the operation of the laws in force regulating the disposition of the public lands.

4. If these views are correct, then the lands in question were embraced in the body of the act of May 15th, 1856, and the title passed by that grant to the State of Iowa in trust. The State took the lands in trust, and by an express provision of the act they were to "be applied to no other purpose whatsoever" than that of aiding in the construction of certain railroads therein named. It is unnecessary to say that the defendants' enterprise is not one of those named in the act as those to which the application of the lands granted is expressly restricted. Whether or not a title in presenti passed to the State on the passage of this act I do not deem it necessary now to determine; but I think it is quite certain that that act placed these lands in such a position that they were not reached by the resolutions of Congress of March 2, 1861, and July 12, 1862, upon which the defendants rely. To conclude otherwise would be to hold that these joint resolutions repeal pro tanto, without any express provisions—by implication merely—the public act of May 15th, 1856. A construction by which the repeal of a statute by implication is sought to be established is never favored, especially where private rights are concerned.

5. These views being legal conclusions drawn from facts conceded in the case, or established by uncontradicted evidence, cover the whole controversy, except the question of damages. It is my duty, therefore, to direct you to find a verdict for the plaintiff, and assess the damages which he has proved he has suffered from the failure of his title to these lands. The rule by which you will be guided will be the amount of the consideration paid, with interest from the day of payment to the present time, at the rate of six per cent. per annum.

The defendants' counsel excepted to that part of the charge concerning the effect of the act of August 8th, 1846, contained in the second proposition or section of said charge; and also excepted to that part of the charge contained in the third proposition or section thereof; and also excepted to that part of the charge contained in the fourth proposition or section thereof; and also to that part of the charge contained in the fifth proposition or section thereof.

The court thereupon charged and instructed the jury to find a verdict for the plaintiff; to which charge and instructions the defendants' counsel excepted.

The jury found a verdict in favor of the plaintiff, and assessed his damages at $24,254 90.

And because the said several exceptions do not appear by the record of the said trial, the said presiding judge, on the prayer of the defendants, has set to this bill of exceptions his seal, the third day of November, one thousand eight hundred and sixty-four.

WILLIAM D. SHIPMAN. [L. S.]

Filed Nov. 21, 1864.

243 *Bond for costs.*

Of the United States of America for the southern district of New York, in the second circuit.

CALVIN BURR, PLAINTIFF,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, defendants.

Know all men by these presents that we, Electus B. Litchfield and William Savage, are held and firmly bound unto the above-named plaintiff in the sum of five hundred dollars, to be paid to the said plaintiff; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 19th day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas the above-named defendants have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named defendants shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make said writ of error and complaint good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. B. LITCHFIELD. [L. S.]
W. SAVAGE. [L. S.]

Sealed and delivered and taken and acknowledged this 19th day of Nov., 1864, before me, by Electus B. Litchfield and William Savage, above named, to me known to be the persons who executed the foregoing bond.

JOHN G. FLOYD, J'R,
Notary Public N. Y. City.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Electus B. Litchfield and William Savage, being duly sworn, depose and say, and each for himself says, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

E. B. LITCHFIELD.
W. SAVAGE.

Sworn to this 19th day of November, A. D. 1864, before me.
JOHN G. FLOYD, J'R,
Notary Public in N. Y. City.

The foregoing bond and the sureties therein named are consented as sufficient.
Nov. 21, 1864.

F. W. GILBERT,
Pl'ff's Att'y.

Approved Nov. 22, '64.

S. NELSON.

Filed this 22d day of Nov., 1864.

244 By the honorable one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Calvin Burr:

Whereas The Des Moines Navigation and Railroad Company, plaintiff in error, lately issued out of the Supreme Court of the United States a writ or error directed to the judge of the circuit court of the United States for the southern district of New York, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between you, said Calvin Burr, defendant in error, as plaintiff, and said plaintiffs in error as defendants, a manifest error hath happened, to the great damage of the said the plaintiffs in error; and whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, at the city of Washington, on the fifth day of Dec'r next: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said fifty day of Dec'r next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 22d day of Nov., in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

S. NELSON.

(Endorsed:)

U. S. Supreme Court. The Des Moines Navigation and Railroad Co., pl'ffs in error, vs. Calvin Burr, def't in error. Citation. Tracy & Olmstead, attorneys.

Due service of a copy of the within citation is hereby admitted this 18th day of Nov., 1864, at No. 18 William st., in the city of New York.
Filed Nov. 22, 1864.

CALVIN BURR.

Record filed December 10, 1864.

245 & 246

247 And now, on this day, to wit, the 19th day of October, in the October term, A. D. 1870, of said court, the said entitled cause came on for a final hearing before Honorable Jno. F. Dillon, judge of the United States circuit court for the eighth circuit, presiding, and Honorable James M. Love, district judge for said district; and the said William Baker appearing by Mess. Finch & Rivers, and J. M. Ellwood and Tho's F. Withrow, his attorneys, filed and read in evidence the following documents, to wit:

United States circuit court, district of Iowa.

W'M BAKER *vs.* JESSE WILLIAMS } Original bill.

AND

JESSE WILLIAMS *vs.* W'M BAKER. } Cross-bill.

It is hereby stipulated and agreed that the said W'm Baker, on the

trial of this action, may offer and read in evidence, in the trial of this action, subject to objections for irrelevancy or immateriality, copies of each and every, and all and any of the acts, statutes, letters, documents, or other papers, mentioned and described in the following and annexed list or schedule numbered from one to 88 inclusive, without producing the originals thereof, and without any other or further proof than this stipulation.

Sept. 19th, 1870.

ISAAC COOK,
Att'y for Williams.

1. The act of Congress of the United States, approved August 8th, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory."

2. The joint resolution of the general assembly of the State of Iowa, passed and adopted Jan'y 9th, 1847, entitled "Joint resolution accepting the grant of lands for the improvement of the navigation of the Des Moines River."

3. The letter of Ja's H. Piper, Acting Commissioner of the General Land Office, to his excellency James Clark, governor of Iowa, under date of Oct. 17th, 1846.

4. Letter of Ja's H. Piper, Acting Commissioner of the General Land Office, to the register and receiver of the United States land office at Iowa City, under date of August 17th, 1846.

5. The act of the general assembly of the State of Iowa, creating the board of public works, passed and approved February 24th, 1847, entitled "An act ——

6. The letter of James H. Piper, Acting Commissioner of the General Land Office, to Jesse Williams, at Iowa City, under date of Nov'r 27th, 1846.

248 7. The letter of Jesse Williams & Josiah H. Bonney, agents or commissioners appointed by the Governor to select the lands under act of August 8th, 1846, to James Clark, governor of the Territory of Iowa, under date of December 17th, 1846.

8. The letter of Richard M. Young, Commissioner of the General Land Office, to Charles Corkery, secretary of the board of public works, under date of February 23rd, 1848.

9. Letter of Charles Corkery to Richard M. Young, Commissioner of the General Land Office, under date of Sept. 18th, 1848.

10. Letter of Charles Corkery, secretary of the board of public works, to Charles Neeley, register of the United States land office at Iowa City, under date of September 18th, 1848.

11. Letter of A. C. Dodge, G. W. Jones, Shepherd Lefler, and W'm Thompson, Representatives in Congress from the State of Iowa, to R. J. Walker, Secretary of the Treasury, under date of January 8th, 1849.

12. Letter of R. J. Walker, Secretary of the Treasury, to Dodge, Jones, Lefler & Thompson, Representatives in Congress, under date of March 2nd 1849.

13. Letter of R. J. Walker, Secretary of the Treasury, to R. M. Young, Commissioner of the General Land Office, under date of March 2nd 1849.

14. Letter of R. M. Young, Commissioner of the General Land Office, to the register & receiver of the United States land office at Iowa City, under date of June 1st, 1849.

15. Letter of Jesse Bowen, register, and Easter Morris, receiver, of

the United States land office at Iowa City, under date of June 16th, 1849, with the endorsement thereon to Commissioner of the General Land Office.

16. Letter of Jesse Bowen, register of the United States land office at Iowa City, to the Commissioner of the General Land Office, under date of June 21st, 1849.

17. Letter of J. Butterfield, Commissioner of the General Land Office, to Jesse Williams, under date of December 19th, 1849.

18. The report of the Commissioner of the General Land Office to the Secretary of the Interior, under date of January 14th, 1850.

19. The letter of the Secretary of the Interior to the Commissioner of the General Land Office under date of April 6th, 1850.

20. The letter of T. Ewing, Sec. of Interior, to Com'r of Gen. Land Office of April 6, 1850.

21. The letter of J. Butterfield, Commissioner of the General Land Office, to the President of the United States, under date of Sept'r 19th, 1850.

22. The letter of the president, secretary, & treasurer of the board of public works of the State of Iowa, to the Commissioner of the General Land Office, under date of Feb. 15th, 1851, with the endorsement thereon.

23. The telegram of W'm Patterson, pres't, and J. Williams, secretary of the board of public works, to the secretary of the Interior, under date of Feb. 22, 1851.

24. Opinion of Reverdy Johnson, Att'y General, under date of July 19th, 1850.

25. Letter of A. H. H. Stuart, Secretary of the Interior, to the Commissioner of the General Land Office, under date of July 26th, 1851.

26. Letter of A. H. H. Stuart, Secretary of the Interior, to the Commissioner of the General Land Office, under date of Oct. 29, 1851.

249 27. Letter of J. Butterfield, Commissioner of the General Land Office, to V. P. Van Antwerp, under date of Nov'r 1, 1851.

28. Letter of J. Butterfield, Commissioner of the General Land Office, to the register of the U. S. land office at Dubuque, under date of March 16th, 1852.

29. Letter of J. Butterfield, Commissioner of Gen'l Land Office, to Geo. Gellasspy, under date of March 16th, 1852.

30. Letter of J. Butterfield, Com'r of Gen'l Land Office to the register of the United States land office, under date of April 20th, 1852.

31. Letter of A. H. H. Stuart, Sec'y of the Interior, to the acting Commissioner of the General Land Office, under date of August 23d, 1852.

32. Proclamation of the President of the United States directing sales of public lands, and under which lands were offered for sale by Robert L. Tidrick, register of U. S. land office at Des Moines, Iowa, Feb. 1, 1853.

33. Letter of Charles S. Fraley, Acting Commissioner of the Gen'l Land Office, to Geo. Gillaspy, register, under date of December 2nd, 1853.

34. Letter of John Wilson, Com'r of Gen'l Land Office, to Geo. Gillasspy, register, &c., under date of Jan'y 6th, 1854.

35. Letter of John Wilson, Com'r of Gen'l Land Office, to Tho's H. Benton, j'r, superintendent of public instruction of the State of Iowa, under date of Jan'y 6th, 1854.

36. Letter of John Wilson, Com'r of Gen'l Land Office, to Geo. Gillasspy, register, &c., under date of July 6th, 1854.

37. Letter of John Wilson, Com'r of Gen'l Land Office, to the register

of U. S. land office at Des Moines, Iowa, nnder date of January 7th, 1854.

38. Act of the gen'l assembly of the State of Iowa, approved Jan'y 5, 1855, entitled "An act for the relief of settlers on certain river lands."

39. Telegram of Tho's A. Hendrix, Com'r of the Gen'l Land Office to the register & receiver of the United States land office at Council Bluffs, Dubuque, Chariton, and Fort Des Moines, under date of May 10th, 1856.

40. Telegram of Tho's A. Hendrix, Com'r of Gen'l Land Office, to the register of the U. S. land office at Fort Dodge, Iowa, under date of May 12, 1856.

41. Letter of Tho's A. Hendrix, Com'r of Gen'l Land Office, to Geo. W. Jones, U. S. Senator, under date of May 12, 1856, together with the schedule or exhibit accompanying the same.

42. Letters of Tho's A. Hendrix, Com'r of the Gen'l Land Office, to register of the U. S. land office at Des Moines, Iowa, under date of May 15th, 1856.

43. Letter of R. McClelland, Secretary of the Interior, to Tho's A Hendrix, Com'r of Gen'l Land Office, under date of January 9th, 1856.

44. Opinion of C. Cushing, Att'y Gen'l, in response to inquiry of Secretary McClelland, under date of May 12, 1856.

45. Letter of R. McClelland, Sec. of Interior, to Acting Com'r of Gen'l Land Office, under date of July 16th, 1856.

46. Letter of Reverdy Johnson to R. McClelland, Sec. of Interior, under date of Nov'r 10, 1856.

47. Letter of McClelland, Sec. of Interior, to Reverdy Johnson and reply, under date of Nov'r 10, 1856.

48. Letter of Tho's A. Hendrix, Com'r of Gen'l Land Office, to
250 Barnhart Henn, agent of the State of Iowa and the railroad company, under date of March 3, 1857.

49. Joint resolution of the gen'l assembly of the State of Iowa, under date of March 22d, 1858, entitled "Joint resolution, containing propositions for the settlement with the Des Moine' Navigation & Railroad Company," and found in revision of 1860, at page 906.

50. Acceptance by the De' Moine' Navigation & Railroad Company of the propositions for settlement contained in the joint resolutions of the gen'l assembly of the State of Iowa, of March 22d, 1858.

51. Certificate of Ralph P. Lowe to the President of the United States, dated April 28th, 1858.

52. Deed or patent from the State of Iowa to the De' Moine' Navigation & Railroad Company, under date of May 3d, 1858.

53. Deed or patent from the State of Iowa to the De' Moine' Navigation and Railroad Company, under date of May 5, 1858.

54. Deed or patent, general in its terms, from the State of Iowa to the De' Moine' Navigation and Railroad Company, under date of May 18th 1858.

55. Act of gen'l assembly of the State of Iowa, approved March 22d, 1858, entitled "An act appointing a commissioner to procure the lands granted for improving the navigation of the Des Moines River, to be certified to the State."

56. Letters of Charles Mason, agent of the State under act of March 22d, 1858, to Jacob Thompson, Sec'y of the Interior, under date of April 30th, 1858.

57. Letter of Jacob Thompson, Secretary of the Interior, to Charles Mason, agent, under date of May 8th, 1858.

58. The act of the gen'l assembly of the State of Iowa, approved

March 22d, 1858, entitled "An act disposing of the grant of land made by an act of Congress, granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River."

59. Letter of Tho's A. Hendrix, Commissioner of the Gen'l Land Office, to Geo. W. Jones, U. S. Senator, under date of Feb. 17th, 1859.

60. Letter of J. Thompson, Sec. of Interior, to the Commissioner of the General Land Office, under date of March 26th, 1859.

61. Notice, numbered 661, prepared and issued by Joseph S. Wilson, Com'r of the General Land Office, headed & entitled "Notice respecting certain lands in the State of Iowa," under date of May 18th, 1860.

62. Letter of Joseph S. Wilson, Com'r of Gen'l Land Office, to W'm T. Steiger, in June, 1860, in answer to a letter from said Steiger, claiming to select certain lands within the claimed limits of the Des Moines River grant above the Raccoon Forks, under the act of May 15, 1856, for railroad purposes.

63. Extract of letter from Joseph S. Wilson, Com'r of the General Land Office, to the Secretary of the Interior, under date of July 7th, 1860.

64. Proclamation presented by Joseph S. Wilson, Com'r of Gen'l Land Office, to the Secretary of the Interior, for the sale of public lands at the Fort Dodge and Sioux City land offices, under date of Aug. 13, 1860, with the endorsement of the Secretary of the Interior thereon, of date of Aug. 13th, 1860.

65. Letter of J. Thompson, Secretary of the Interior, to Commissioner of Gen'l Land Office, under date of Sept'r 6th, 1860.

66. Letter of J. Thompson, Secretary of Interior, to Geo. W. Jones, Senator, under date of Nov'r 3d, 1860. (This is extract from the letter.)

251 67. Act of the gen'l assembly of the State of Iowa, approved April 2d, 1860, entitled "An act making provisions for the settlement of all liabilities of the State growing out of the sale of certain lands of the De' Moine' River improvement grant as school lands."

68. Extract from letter of J. Thompson, Sec. of Interior, to S. J. Kirkwood, gov'r of Iowa, under date of November 3, 1860.

69. Joint resolution of the Senate and House of Representatives in Congress, approved March 2d, 1861, entitled "Joint Resolution to quiet title to lands in the State of Iowa."

70. Letter of J. M. Edmunds to Ja's W. Grimes, U. S. Senator, under date of April 15th, 1862.

71. Reply to the same by governor of Iowa—by letter under date of May 6th, 1862.

72. Letter of J. M. Edmunds, Com'r of General Land Office, to the gov. of Iowa, under date of June 26th, 1862.

73. Letter of J. M. Edmunds, Com'r of General Land Office, to Kirkwood, gov'r of Iowa, under date of Sept. 25th, 1862.

74. Certified lists of the lands furnished by Kirkwood to Com'r of Gen'l Land Office, under joint resolution of March 2d, 1861, in compliance with above letters of Edmunds, filed in office of Commissioner, on day of , A. D. 1862, with certificates of register of State land office & governor.

75. The act of Congress of July 12th, 1862, entitled "An act conferring a land claim in the State of Iowa, and for other purposes."

76. Letter of J. M. Edmunds, Com'r of Gen'l Land Office, to the Secretary of the Interior, J. P. Usher, under date of Feb. 23d, 1863.

77. Letter of W. T. Otto, Ass't Sec. of Interior, to Com'r of Gen'l Land Office, under date of April 7th, 1863.

78. Section of the Statute of Iowa, code of 1851, sec. 1202—revision of 1860, sec. 2210.

79. Letter of O. H. Browning, Sec. of Interior, to Com'r of Gen'l Land Office, relating to pre-emption of Elisha Spickelimer, under date of December 31st, 1868.

80. Letter of O. H. Browning, Sec'y of Interior, to Com'r of Gen'l Land Office, relating to pre-emption of David C. Martz, under date of Dec'r 31st, 1868.

81. Letter of O. H. Brow'ing, Sec'y of Interior, to Com'r of Gen'l Land Office, relating to pre-emption of Ezra H. Bennett, under date of Feb. 27th, 1869.

82. Letter of O. H. Browning, Sec'y of Interior, to Com'r of Gen'l Land Office, relating to pre-emption of Levi Hull, under date of Feb'y 27th, 1869.

83. Letter of J. D. Cox, Sec'y of Interior.

84. The lists of lands, certified and approved to the State of Iowa, by Com'r of the Gen'l Land Office, and Sec't'y of Interior, under act of Aug'st 8th, 1846; dated Oct. 30th, 1851; March 10th, 1852; Dec. 17th, 1853; December 30th, 1853.

85. Articles of incorporation of the De' Moine' Navigation and Railroad Company.

86. Contract of the State of Iowa with the De' Moine' Navigation & Railroad Company.

87. Deed from De' Moine' Navigation and Railroad Company to the plaintiff, and all necessary conveyances to show chain of title from the State to pl't'f.

88. The record evidence, under which the defendant claims title, to wit:

252 *Statement.*

United States circuit court, district of Iowa, in equity.

WILLIAM BAKER *vs.* JESSE WILLIAMS. } Original bill.

JESSE WILLIAMS *vs.* W'M BAKER. } Cross bill.

On the 8th day of August, 1846, the Congress of the United States passed an act, of which the following is a copy:

An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory.

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so-called,) in said Territory, one equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governer thereof, subject to the approval of the Secretary of the Treasury of the United States.

"SECTION 2. *And be it further enacted*, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

"SECTION 3. *And be it further enacted*, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States or person in their service passing through or along the same: *Provided always*, That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

"SECTION 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and for no other: *Provided*, The legislature of the State of Iowa shall accept the said grant for the said purpose.

"Approved August 8th, 1846."

That, on the 9th day of January, 1847, Iowa, (having then been
253 duly organized and admitted as a State,) fully accepted the said grant, in said act of August 8th contained, for the purpose contemplated in said act.

That, on or about the 17th day of October, 1846, James H. Piper, Acting Commissioner of the General Land Office, addressed and forwarded to the then governor of Iowa, an official letter of which the following is a copy:

GENERAL LAND OFFICE, *Oct.* 17, 1846.

His Excellency, JAMES CLARK,
Governor of Iowa, Iowa City.

SIR: By the first section of the act of Congress, approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is enacted "that there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory, one equal moiety, in alternate sections, of the public lands) remaining unsold and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

Under this grant the Territory is entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River, from Sullivan's line, the northern boundary of Missouri, to the

Raccoon Fork of the Des Moines River. The act authorizes the selections to be made by an agent or agents appointed by you, but as the grant is limited to one equal moiety of the unsold and unappropriated, &c., to be taken in alternate sections, the only selection which appears to be required, or which can be made under the law, is for you to determine whether you will take the lands in the sections having even numbers, as 2, 4, 6, &c., or those that have odd numbers, as 1, 3, 5, &c. The odd numbers would probably be the most advantageous to the Territory, as in selecting the even numbers you would be deprived of the 16th section in each township, which, as you are aware, is reserved for schools.

Enclosed I send you a diagram of this grant, the boundary being colored pink, the alternate sections blue, and the school lands brown. I also enclose you a list showing the areas of all the sections, or parts of sections, within this grant, those having odd numbers in one column, and the even numbers in another. When you have determined the sections you will select, please advise the land officers at Fairfield and Iowa City, who have been instructed to withhold from sale or entry of any kind, all the vacant and unappropriated land in the sections you may select. Please also advise this office, return the list and diagram, and a list of the vacant lands in the sections selected will be immediately prepared, submitted to the Secretary of the Treasury for his approval, as required by the law, and when approved will be certified to you.

With great respect, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

That, on the said 17th day of October, 1846, the said James H. Piper, Acting Commissioner, addressed and forwarded an official
254 letter to the register and receiver of the United States land office at Iowa City, of which the following is a copy:

GENERAL LAND OFFICE, *Oct.* 17, 1846.

REGISTER AND RECEIVER,
Iowa City; Iowa.

GENTLEMEN: By the first section of the act of Congress, approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is enacted, "That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Forks, (so called,) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, encumbered, or appropriated,) in a strip of five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States." This grant, you perceive, affects the lands five miles in width on each side of the Des Moines, from the southern boundary of your district to the Raccoon Forks of the Des Moines, as shown by the enclosed diagram.

No action can be had by you in this matter, however, till you are advised by the governor whether he will select the sections with the odd or those with the even numbers.

As soon as you are so advised you will please reserve from sale or

entry of any kind all the unsold and unappropriated lands in the sections selected by him, till further orders from this office.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

That, on the 27th of November, 1846, James H. Piper, Acting Commissioner of General Land Office, addressed and forwarded to Jesse Williams an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *November* 27, 1846.

JESSE WILLIAMS, Esq.,
Iowa City, Iowa.

SIR: By a communication from the governor of Iowa, of the 14th inst., it appears that the letter to him from this office, of the 17th ultimo, enclosing a diagram of the grant made by the act of 8th August last, to aid in the improvement of the Des Moines River, and containing the views of this office in relation thereto, has not been received; and as the governor requests that further communications on this subject be addressed to you, I enclose, for your information, a copy of that letter.

It is important to the interests of Iowa that the land officers be advised of the selection you design to make, at the earliest practicable period, as the sales are progressing and the grant does not attach till the selection is made, and consequently the lands cannot be secured till that has been done.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

255 That subsequently the governor of Iowa, as provided and contemplated by the first section of the said act of August 8th, 1846, appointed as agents to select, designate, and set apart the lands granted by said act to the State, Jesse Williams and Josiah H. Bonney, who, on the 17th day of December, 1846, made report to the governor of their doings as such agents, by letter, of which the following is a copy:

IOWA CITY, *December* 17, 1846.

To his excellency, JAMES CLARK,
Governor of Iowa Territory.

SIR: The undersigned commissioners appointed under the provisions of the act of Congress, approved August 8th, 1846, making a grant of land for the improvement of the Des Moines River, beg leave to report to your excellency that we have selected the odd sections, as designated on the map furnished by the General Land Office, showing the location of the Des Moines and the sections of land within five miles of said river, which map is herewith returned to you.

Very respectfully, your obedient servants,

JESSE WILLIAMS.
JOSIAH H. BONNEY.

That the general assembly of the State of Iowa, by act, on the 24th of February, 1847, created a "board of public works," consisting of a president, secretary, and treasurer, to whom were committed the work, construction, and management of the river improvement, and the care,

control, sale, and disposal, and management of the lands granted to the State, under and by the said act of August 8th, 1846. That said board was duly organized, and went into operation on the 22nd Sept., 1847, and that, on the 23rd February, 1848, Richard M. Young, then Commissioner of the General Land Office, addressed to said board of public works an official letter, of which the following is a copy:

"GENERAL LAND OFFICE, *February 23d*, 1848.

"SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received, and would have received an earlier response, but for the erroneous and defective surveys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that river, under the act of the 8th of August, 1846. As these surveys have been corrected, action will be had on these selections as soon as possible, and when approved they will be certified to you.

"It is not usual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned; and these will, of course, be transmitted as they can be prepared.

"All the aid that this office can give the board of public works in the discharge of its duties will be cheerfully rendered, and if it is possible to procure copies of the reports of the Topographical Bureau of the examination heretofore made of the Des Moines River, it will afford me pleasure to do so, and forward them to you.

"A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point.

"By the terms of the law the grant is of an equal moiety, in
256 alternate sections, of the public lands remaining unsold and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of the river, to be selected within said Territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa.

"Very respectfully, your obedient servant,

"RICHARD M. YOUNG,

"*Commissioner.*

"CHARLES CORKERY, Esq.,

"*Secretary of Board of Public Works, Fairfield, Iowa.*"

On the (19) nineteenth of June, (1848,) eighteen hundred and forty-eight, without any notice of a change of opinion, a proclamation was issued, signed by the President and countersigned by the Commissioner of the General Land Office, ordering into market some of the lands which lay above the Raccoon Fork, and which would belong to the State according to the rule laid down in the aforesaid letter of the (23) twenty-third of February, (1848,) eighteen hundred and forty-eight. The sale was to take place on the (16) sixteenth of October, 1848.

That, on the 18th of September, 1848, Charles Corkery, secretary of the (Iowa) board of public works, addressed and forwarded to R. M. Young, Commissioner of the General Land Office a letter of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: The attention of this office has been called to the proclamation of the President of the United States, bearing date the 19th June last, for the sale of lands in Iowa, by which I perceive that lands donated to this State for the improvement of the Des Moines River are to be offered for sale at Iowa City, on Monday, the 16th October next. These lands are situated above the Raccoon Forks of the Des Moines River, in townships No. 79, 80, &c., ranges No. 25, 26, &c., and a sale by the United States will be in conflict with your opinion expressed to me in your letter of the 23d February last, in which you say that "The State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa."

Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be greatly embarrassed by any impediments to her favorable prospects in this regard. We believe that the fact of having these lands embraced in the proclamation was an oversight, without any intention to curtail the resources of the State, and that it will be corrected on being discovered.

Very respectfully, sir, your obedient servant,

CHARLES CORKERY,
Secretary of Board of Public Works.

Hon. R. M. YOUNG,
Commissioner of General Land Office.

257 NOTE.—A copy of the foregoing letter has been inclosed in the following letter to the register of the land office at Iowa City.

That, on the same day (September 18, 1848,) the said Charles Corkery, as secretary of the board of public works, addressed to C. Neeley, register of the United States land office, at which the sale was ordered to take place, the protest, of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: I enclose you a copy of a letter which I have transmitted by this day's mail to the Commissioner of the General Land Office, at Washington City, and take this opportunity of protesting against the sale of the lands therein referred to.

This protest is based not only on the act of Congress donating lands to the State of Iowa for the improvement of the Des Moines River, but also on the decision of the Commissioner of the General Land Office, bearing date the 23d February, 1848, in the words as follows: "A question has arisen as to the extent of the grant made to Iowa by the act of the 8th August, 1846, and the opinion of this office has been requested on that point. By the terms of the law the grant is of one equal moiety, in alternate sections, of the public lands remaining unsold and not otherwise disposed of, encumbered, or appropriated, in a strip five miles in width on each side of the said river, to be selected within said Territory, &c., and the proceeds are to be applied in the improvement of the navigation of said river, from its mouth to the Raccoon Fork. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa."

As the board has had no information that this opinion has been rescinded, we believe that you will be informed on the 'ubject, at least within the two weeks prescribed for the continuance of the sale.

Respectfully,

CHARLES CORKERY,
Secretary of Board of Public Works.

CHARLES NEELY, Esq.,
Register of Land Office, Iowa City.

That, on the 8th day of January, 1849, the Representatives in Congress from the State of Iowa, addressed and forwarded to Hon. R. J. Walker, Secretary of the Treasury, a letter of which the following is a copy:

"CONGRESS, *January 8th*, 1849.

"SIR: During the last summer we were much surprised to see lands proclaimed for sale by the President of the United States, which had been declared by the General Land Office, and considered by the people of Iowa, as the property of that State, under the act of 8th of August, 1846, 'granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory.'

"On inquiring of the Commissioner of the General Land Office as to the reasons for this course, he informed us that he had changed his original opinion as to the extent of this grant, and was now inclined to think that it was limited to the Raccoon Fork; but no official
258 promulgation of this opinion has yet been given, except negatively by proclaiming the lands as above mentioned.

"The granting clause in the act of August 8th, 1846, is so clear that we are constrained, by a due regard to the interests of the people and State of Iowa, to ask your consideration of the subject; and we are further encouraged to take this course, as the Commissioner, we are assured, will be pleased to extend to the State the full complement of the grant, if the law, in your opinion, should bear that construction. This act of August, 1846, is found in the acts of the first session 29th Congress, page 115.

"The first part of the first section designates the object for which the grant was made, to wit: 'There shall be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding the said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory.'"

"The next clause describes the grant and its extent, to wit: 'One equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, incumbered or appropriated,) in a strip five miles in width on each side of the river.'

"This language is so plain that the extent of the grant is a self-evident proposition, and requires no argument. But the idea is entertained that the improvement governs the extent of the grant. This construction, we beg leave to state, has never obtained. Grants have frequently been made for seats of government, county sites, and the erection of public buildings, but in no case has it been contended that the object of the grant governs the extent of it; otherwise the act passed by Congress on the same day with that now in consideration, (page 140,) 'to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin Rivers, and to connect the same by a canal in the Territory of Wisconsin,' must be construed as running the whole length of the Wisconsin River, also, as the limitation of that grant to the Fox

River, the lakes through which it passes, and the canal, is not more specific than the terms used to designate the grant for the improvement of the Des Moines River.

"The reason for this extension of the grant to Iowa above the terminus of the improvement is, moreover, manifest, because, near the mouth of the river that improvement will be very expensive; and there the grant does not attach, because the lands on the Missouri side of the river, below Sullivan's line, are in Missouri, and those on the Iowa side are the property of individuals; and, further, most of the lands some distance up the Des Moines have been sold by the Government, and, as the grant is only of the unsold and unappropriated lands in the alternate sections, the only equivalent for those which had been sold that could be given are the vacant lands far in the interior from the Mississippi; and hence the terms used in the law.

"As the terms of the act, then, are so clear and explicit, and as the reasons for the extension of the grant, as provided by that act, are so obvious, we respectfully request, in our own behalf, and in behalf of the State and her citizens, who look with that confidence heretofore so fully justified, that you will not withhold the munificence of Congress, and thus cripple this young and rising State in her first great enterprise, and thus involve her in inextricable debt and difficulty. We earnestly request that you will give the necessary instructions for the selection and approval of these lands along the entire route of the Des Moines, as contemplated by the law, as fast as the surveys are made and returned, and that the lands which belong to the State,
259 which have been inadvertently offered, and which remain unsold, may be withdrawn from the market, and certified to the State also.

"We have the honor to be, with great respect, your obedient servants,

"A. C. DODGE.
"GEORGE W. JONES.
"SHEPHERD LEFFLER.
"W'M THOMPSON.

"Hon. R. J. WALKER,
"*Secretary of the Treasury.*"

That, on the 2d day of March, 1849, the said R. J. Walker, Secretary, in answer to said letter of the Iowa Representatives in Congress, addressed and forwarded to them a letter, of which the following is a copy:

"TREASURY DEPARTMENT, *March* 2, 1849.

"GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress 'granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory,' approved 8th August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

"I have the honor, &c.,

"R. J. WALKER,
"*Secretary of Treasury.*

"Messrs A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON."

That, on the same day, (March 2, 1849,) the said R. J. Walker, Secretary of Treasury, addresssed an official letter to the Commissioner of the General Land Office, of which the following is a copy:

TREASURY DEPARTMENT, *March* 2, 1849.

"SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me, under this date, to members in both Houses of Congress, from the State of Iowa, with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter, to which the within is a reply, and accompanying papers.

"Very respectfully,

R. J. WALKER, *Secretary.*

"R. M. YOUNG, *Commissioner.*"

That, on the first day of June, 1849, R. M. Young, Secretary of the Interior, addressed and forwarded to the register and receiver of the United States land office at Iowa City, an official letter of which the following is a copy:

260 GENERAL LAND OFFICE, *June* 1, 1849.

REGISTER AND RECEIVER,
Iowa City, Iowa.

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are hereby directed to withhold from sale all the lands situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Forks.

Enclosed I send you a diagram, upon which the State selections above that point are colored yellow. I have also to request that you will make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

That, in answer to the said letter of R. M. Young, Commissioner, &c. the said register and receiver, on the 19th of June, 1849, addressed to said Commissioner a letter, of which the following is a copy:

LAND OFFICE, *Iowa City, June* 16, 1849.

SIR: Your letter of 1st instant, directing us to withhold from sale the odd sections above the Raccoon Forks of the Des Moines, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed by your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servants,

JESSE BOWEN, *Register.*
EASTON MORRIS, *Receiver.*

HON. COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

That said letter was received by said Commissioner of General Land Office, and is now on file in said office, and contains the following endorsement:

"Acknowledges the receipt of Commissioner's letter of the 1st inst., directing the odd sections above the Raccoon Fork to be withheld from sale."

That, on the 21st of June, 1849, the register at Iowa City, forwarded to Commissioner of the General Land Office, the lists called for by and in his letter of June 1, 1848, enclosed in a letter, of which the following is a copy:

REGISTER'S OFFICE,
Iowa City, Iowa, June 21, 1849.

SIR: I herewith transmit to you a list of the sales and locations of lands on the odd sections within five miles of the Des Moines River, above the Raccoon Forks of said river, in obedience to your instructions of June 1, 1849.

Very respectfully, your obedient servant.

JESSE BOWEN, *Register.*

Hon. COMMISSIONER OF THE GENERAL LAND OFFICE,

261 That, on the 19th of December, 1849, J. Butterfield, Commissioner of the General Land Office, addressed and forwarded to Jesse Williams, then secretary of board of public works, an official letter, of which the following is a copy:

"GENERAL LAND OFFICE, *December 19th*, 1849.

"SIR: A letter has been received at this office from the Hon. A. C. Dodge and the Hon. Geo. W. Jones, enclosing one from you to the former, dated the 30th ult., requesting that you may be furnished with 'a list of the Des Moines River grant above the Raccoon Fork.' In reply, I have to state that said list has not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not completed on the books of this office until recently. Said list is now in course of preparation, and will be ready for transmission at an early day. In the latter part of your letter you say, 'The lists heretofore forwarded, of land below the fork have been furnished the secretary of state instead of the board, who are the rightful and only agents of the State for said land.'

"In the absence of evidence showing the right of another to receive confirmed lists of State grants, it is usual to send them to the secretary of state. Such is *is* the case at present in relation to this grant. If, however, you will furnish this office with evidence as to your right, as secretary of the board of public works, to receive said lists, and to correspond with this office in relation thereto, they will hereafter receive the desired direction.

"I am, sir, your obedient servant,

"J. BUTTERFIELD,
"*Commissioner.*

"JESSE WILLIAMS, Esq., *Iowa City, Iowa.*"

On the 14th January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior of the amount of land which had been granted to the several States, respectively, for purposes of internal improvements. In this report, after a statement

that the amount of lands charged to the State of Iowa, is 824,070 acres, occurs the following language:

"This amount, in accordance with the decision of the Secretary of the Treasury of the 2d of March, (1849,) eighteen hundred and forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres."

On the 13th of March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading:

"No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2d, 1849."

On the 6th of April, 1850, the Secretary of the Interior, in answer to the letter of the Commissioner of the General Land Office, enclosing said lists, addressed to said Commissioner a letter, of which the following is a copy:

"DEPARTMENT OF THE INTERIOR,
"*Washington, April 6th*, 1850.

"SIR: Having considered the question submitted to me con-
262 nected with the claim of the State of Iowa to select, under the act of August 8th, 1846, lands for the improvement of the Des Moines River, I am clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Fork, without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8th, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law not having been carried into effect by him, his opinion, merely expressed, is open for reversion.

"The lists of sections and other papers submitted with your letter of the 13th ultimo are herewith returned.

"As Congress is now in session, and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State's selections.

"I am, sir, very respectfully, your obedient servant,
"T. EWING, *Secretary*.

"The COMMISSIONER OF THE GENERAL LAND OFFICE."

That, on the 19th of September, 1850, J. Butterfield, then Commissioner of General Land Office, addressed to Millard Fillmore, then President of the United States, the letter, of which the following is a copy:

GENERAL LAND OFFICE,
September 19th, 1850.

His Ex'y M. FILLMORE,
President of the United States.

SIR: I have the honor to acknowledge the receipt of the letter from several members of the Senate and House of Representatives, referred by you to this office, asking that the sale of the lands within twenty-five

miles of the supposed route of the railroad from Chicago to Mobile be suspended for six months, or until the lands shall have been located, in order that the act may be fully carried out that was recently passed by Congress, "granting the right of way, and making a grant to the States of Illinois, Mississippi, and Alabama, in aid of the construction of that road; and in accordance with your instructions, beg leave to report:

That, so far as I have been able to examine the question, no authority has been specifically conferred upon the President by law to suspend the sale of lands in cases of this character, where they have been proclaimed and offered at public sale. It would appear, however, that he has always been considered as having that authority by implication, from the nature of the duties devolved on him by the whole system of laws making provision for the sale and disposition of the public domain. For the cases, among others, in which this authority has been exercised by the President, I refer to a letter from this office to the register at Piqua, Ohio, on the 28th September, 1828, and which is as follows, to wit:

"The President having been advised by the governor of Ohio that the route of the canal from Dayton to Lake Erie by the Maumee will probably pursue the course of the Anglaise River from the head
263 of some one of its branches to its mouth, he had directed that the lands lying on the same, and to the extent appropriated by the act passed the 24th of May last, be reserved from sale till further advised. The governor of Ohio has been requested to designate to you that branch of the Anglaise on which the canal will most probably be located.

"With respect, &c.,

"GEO. GRAHAM,
"*Commissioner.*"

Similar instructions were issued by Commissioner Blake to the land office at Green Bay on the 11th April, 1844, for reserving the lands along the Wisconsin and Fox Rivers, in anticipation of the passage of an act making a grant for the improvement of those rivers; and the reservation then ordered was extended by instruction to those offices of the 8th of August, 1846, the day on which the law was passed by Congress making the grant.

In many other cases the same authority has been exercised, but to a less extent; the foregoing, however, being of an early and late date, are deemed sufficient to show that the President has always been regarded as having this authority; and as it has thus been exercised, and in the present case must of necessity be inferred to enable the Executive to secure to the States mentioned, and the General Government, the benefits conferred by the law, and thus carry out the intention of Congress in passing it, I respectfully recommend:

That instructions be issued to the land offices in Illinois to withhold from sale or location of any kind, till further ordered by this office, all the lands belonging to the Government within three full townships, or eighteen miles, on each side of the supposed line of this road; and that the land offices in Mississippi and Alabama be instructed to withhold, in like manner, all the lands within four full townships, or twenty-four miles, on each side of said route.

The lands can be suspended from sale much more conveniently by townships than by any other given distance; and the reasons for recommending the withholding of a less extent in Illinois than in the

other States is, that the lands in that State are more sought by actual settlers at this time, than in the others, and the general route that the road will pass can be more nearly ascertained.

All of which is most respectfully submitted.

With great respect, your obedient servant,

J. BUTTERFIELD, *Commissioner.*

On the 15th of February, 1851, the board of public works of the State of Iowa, addressed and forwarded to the Commissioner of the General Land Office the letter, of which the following is a copy:

OFFICE OF BOARD OF PUBLIC WORKS,
Ottumwa, Iowa, February 15, 1851.

SIR: The undersigned board of public works of the State of Iowa, have been notified by our honorable Senators in Congress that the Honorable Secretary of the Interior has intimated, in advance of a formal decision in relation to the extent of the grant of lands made to the Territory of Iowa, by the act of Congress, approved August 8, 1846, that a difficulty might arise against the construction put upon said act by the State authorities, growing out of the supposed fact that the agents appointed under the Territorial government, have not made the
264 selection required by the act, beyond the lands embraced in the diagram furnished by the General Land Office and returned to the same by Jesse Williams, one of said agents.

The present board of public works, as well as their predecessors in office, have ever regarded the selection made by said agents as co-extensive with the grant, and as not limited by the diagram alluded to, which only embraced the lands contiguous to the Des Moines River, then surveyed. The selection in general terms of the odd sections was supposed to apply to all lands embraced in said grant, as well those surveyed at the time as those thereafter to be surveyed, nor has any formal selection of the lands since surveyed been deemed necessary. Both the former and present board of public works have sold lands not embraced in said diagram, and lying below the mouth of Raccoon River, and lists of such lands have been furnished by the General Land Office, and confirmed by the Secretary of the Treasury, and yet no selections of these lands has been made beyond that of the Territorial agents. To avoid, however, the difficulty suggested by the Honorable Secretary of the Interior, but not admitting that a selection of said lands has not been made in accordance with said act, we, the undersigned, hereby notify the Commissioner of the General Land Office that we have selected all the lands within five miles of the river Des Moines that are embraced within the odd sections from the mouth of said river to the source of the same, not embraced in the selection heretofore made by the Territorial agents, as granted to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory by the act of Congress of the 8th of August, 1846.

We also request to be furnished, at as early a day as practicable, with a diagram and confirmed list of said lands lying above the Raccoon Forks, and as far up said river as the surveys have been completed.

We are, with high respect, your obedient servants,

WILLIAM PATTERSON, *President.*
JESSE WILLIAMS, *Secretary.*
GEORGE GILLASPY, *Treasurer.*

Hon. J. BUTTERFIELD,
Commissioner of General Land Office, Washington City, D. C.

The foregoing letter of the board of public works to the Commissioner of the General Land Office, now on file in the office of said Commissioner, contains the following indorsement:

SENATE, *March* 10, 1851.

A. C. DODGE:

Enclosed communication from the board of internal improvement of the State of Iowa. Reselect the odd numbered sections throughout the whole extent of the grant of land made to the State of Iowa by act of 8th August, 1846.

On the 22d of February, 1851, the president and secretary of the said board of public works sent to the Hon. A. H. H. Stuart, Secretary of the Interior, a communication by telegraph, of which the following is a copy:

KEOKUK, *February 22d*, 1851.

To Hon. ALEX. STUART:

As agents of the State of Iowa, we demand all the odd sections
265 of land within five miles of the Des Moines River, above Raccoon Forks, for improvement of said river, as provided by the act of Congress upon that subject.

W'M PATTERSON,
President Board of Public Works.

J. WILLIAMS, *Secretary.*

That the Secretary of the Interior approved the selection of the odd-numbered sections, selected by the agents in behalf of the State, as stated in the foregoing letter of the board of public works to the Commissioner of the General Land Office.

On the 14th of April, 1850, the Senators and Representatives in Congress from Iowa protested against the decision indicated by the said letter of Ewing, Secretary of the Interior, to Commissioner of General Land Office, and appealed therefrom to the President. He referred the question to the Attorney General, (Johnson,) who, on the 19th of July, 1850, made his report, giving it fully as his opinion that, by the terms of the grant itself, it extended along the Des Moines River up to its very source.

Previous to the promulgation of this opinion, President Taylor died, and a new cabinet was formed before any action was had upon the decision of Attorney General Johnson. Instead of giving effect to the opinion of Mr. Johnson, the question was submitted anew to the Attorney General, Mr. Crittenden, who, on the 30th of June, 1851, gave it as his opinion that the grant did not extend above the Raccoon Fork.

The Secretary of the Interior, on the 26th of July, 1851, addressed a letter to the Commissioner of the General Land Office, (enclosing the opinion of Attorney General Crittenden,) of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, July 26, 1851.

SIR: Enclosed I send you a copy of an opinion of the Attorney General, dated the 30th ultimo, in which I concur, relative to the claim of the State of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines River above Raccoon Forks, together with all the papers in the case.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the withholding of these lands from market until the close of the then session of Congress may be continued to the end of the approaching session, in order to give the State the opportunity of petitioning for an extension of the grant by law.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

That, after the date of this letter, Secretary Stuart consented to bring the whole matter before the President and Cabinet, who arrived at the decision indicated in the following letter of Secretary Stuart to the Commissioner of General Land Office, of date of October 29th, 1851:

266 DEPARTMENT OF THE INTERIOR,
Washington, October 29, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month.

I have reconsidered and carefully reviewed my decision of the 26th July last, and in doing so find that no decision which I can make will be final, as the question involved partakes more of a judicial than an executive character, which must ultimately be determined by the judicial tribunals of the country; and, although my own opinion on the true construction of the grant is unchanged, yet, in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections, without prejudice to the rights, if any there be, of other parties; thus leaving the question, as to the proper construction of the statute, entirely open to the action of the judiciary.

You will please, therefore, as soon as may be practicable, submit, for my approval such lists as may have been prepared, and proceed to report for like approval, lists of the alternate sections claimed by the State of Iowa, above the Raccoon Forks, as far as the surveys have progressed, or may hereafter be completed and returned.

Very respectfully, &c., &c.

A. H. H. STUART, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On the following day three lists of lands were prepared in the General Land Office, the heading of which will show their respective purposes, and are as follows:

List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury, of 2d of March, 1849, that such grant extended to the north boundary of the State.

List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the fork.

List No. 3, showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

"DEPARTMENT OF THE INTERIOR,
"*October 30th*, 1851.

"The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

"ALEX. H. H. STUART, *Secretary.*"

267 That, on the 1st of November, 1851, J. Butterfield, Commissioner of General Land Office, adressed and sent to V. P. Van Antwerp a letter, of which the following is a copy:

GENERAL LAND OFFICE,
November 1st, 1851.

To V. P. VAN ANTWERP, Esq., present.

SIR: In compliance with the request contained in your letter of this date, to be furnished with lists approved by the Secretary of the Interior, of the lands granted to the State of Iowa by the act of Congress of the 8th of August, 1846, or such portion of them as can now be prepared, I herewith enclose certified copies, numbered 1, 2, & 3, of said lists.

No. 1 shows the odd-numbered sections and parts of sections within the limits of the Des Moines River grant above the Raccoon Fork, in the township embraced in said list.

No. 2 shows the tracts sold within the above-mentioned sections and parts of sections between the 24th of August, 1848, and the 16th of June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon Fork.

No. 3 shows the residuary or vacant tracts, after deducting from list No. 1 the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant, not interfered with by previous sales.

You will perceive that list No. 3 only, has been approved by the Secretary.

Very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

On the 16th of March, 1852, the Commissioner of the General Land Office addressed and forwarded to the register of U. S. land office at Dubuque, Iowa, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
March 16, 1852.

REGISTER, *Dubuque, Iowa.*

SIR: I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys

have progressed, falling to the State of Iowa, under act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2d of March, 1849, and the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior, on the 10th inst., a copy of which has been sent to George Gillaspy, esq., register, &c.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

That, on the same day (March 16th,) the Commissioner of the General Land Office, indited and forwarded to George Gillaspy, register of Des Moines River improvement, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
March 16th, 1852.

SIR: In compliance with the request made in your letter of 5th February last, I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as
268 the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2nd March, 1849, and of the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior on the 10th inst.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

GEORGE GILLASPY, Esq.,
Register, &c., Ottumwa, Iowa.

On the 20th of April, 1852, Butterfield, Commissioner of the General Land Office, wrote and forwarded to register of U. S. land office at Iowa City, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *April 20th*, 1852.

REGISTER, *Iowa City, Iowa.*

SIR: I herewith transmit a list showing the vacant lands in the Iowa City district, in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter 2d March, 1849, and of the Secretary of the Interior of 29th October, 1851, which have not heretofore been approved. Complete lists approved by the Secretary of the Interior, 10th March, were transmitted to the State register and to the register of land office at Dubuque, on the 16th ultimo.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

On the 23d of August, 1852, the Secretary of the Interior addressed the Commissioner of the General Land Office an official letter, of which the following is a copy:

"DEPARTMENT OF THE INTERIOR,
"*October 30th*, 1851.

"The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

"ALEX. H. H. STUART, *Secretary.*"

267 That, on the 1st of November, 1851, J. Butterfield, Commissioner of General Land Office, adressed and sent to V. P. Van Antwerp a letter, of which the following is a copy:

GENERAL LAND OFFICE,
November 1st, 1851.

To V. P. VAN ANTWERP, Esq., present.

SIR: In compliance with the request contained in your letter of this date, to be furnished with lists approved by the Secretary of the Interior, of the lands granted to the State of Iowa by the act of Congress of the 8th of August, 1846, or such portion of them as can now be prepared, I herewith enclose certified copies, numbered 1, 2, & 3, of said lists.

No. 1 shows the odd-numbered sections and parts of sections within the limits of the Des Moines River grant above the Raccoon Fork, in the township embraced in said list.

No. 2 shows the tracts sold within the above-mentioned sections and parts of sections between the 24th of August, 1848, and the 16th of June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon Fork.

No. 3 shows the residuary or vacant tracts, after deducting from list No. 1 the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant, not interfered with by previous sales.

You will perceive that list No. 3 only, has been approved by the Secretary.

Very respectfully, your obedient servant,
J. BUTTERFIELD,
Commissioner.

On the 16th of March, 1852, the Commissioner of the General Land Office addressed and forwarded to the register of U. S. land office at Dubuque, Iowa, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
March 16, 1852.

REGISTER, *Dubuque, Iowa.*

SIR: I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys

have progressed, falling to the State of Iowa, under act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2d of March, 1849, and the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior, on the 10th inst., a copy of which has been sent to George Gillaspy, esq., register, &c.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

That, on the same day (March 16th,) the Commissioner of the General Land Office, indited and forwarded to George Gillaspy, register of Des Moines River improvement, an official letter, of which the following is a copy:

GENERAL LAND OFFICE,
March 16th, 1852.

SIR: In compliance with the request made in your letter of 5th February last, I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as
268 the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2nd March, 1849, and of the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior on the 10th inst.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

GEORGE GILLASPY, Esq.,
Register, &c., Ottumwa, Iowa.

On the 20th of April, 1852, Butterfield, Commissioner of the General Land Office, wrote and forwarded to register of U. S. land office at Iowa City, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *April 20th*, 1852.

REGISTER, *Iowa City, Iowa.*

SIR: I herewith transmit a list showing the vacant lands in the Iowa City district, in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter 2d March, 1849, and of the Secretary of the Interior of 29th October, 1851, which have not heretofore been approved. Complete lists approved by the Secretary of the Interior, 10th March, were transmitted to the State register and to the register of land office at Dubuque, on the 16th ultimo.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

On the 23d of August, 1852, the Secretary of the Interior addressed the Commissioner of the General Land Office an official letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, August 23, 1852.

SIR: I have examined the question involved in the appeal of the Hons. A. C. Dodge, Geo. W. Jones, and Bernhart Henn, of Iowa, from the judgment of the Commissioner of the General Land Office in relation to their application for the issue of patents on the sales and locations of the odd-numbered sections along the Des Moines River, above the Raccoon Fork, which had been made prior to the receipt by the district land officers of Mr. Secretary Walker's decision of the 2d March, 1849, and have to state that, as I approved the selections above the Raccoon Fork, with the express understanding that that approval should not convey to the State any title to tracts which might have been sold or otherwise disposed of prior to the receipt of Mr. Walker's decision, the issuing of patents on the sales and locations in question is in perfect accordance with the views expressed in my letter to the Commissioner of the 29th of October last, and the terms of approval of the selections on the following day.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART,
Secretary.

The ACTING COMMISSIONER OF THE GENERAL LAND OFFICE.

269 That, on the 2d December, 1853, the acting Commissioner of the General Land Office addressed and forwarded to George Gillaspy, register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *December 2nd*, 1853.

SIR: Assisted by the information contained in your letter of the 7th ult., I have ascertained that there are a number of tracts of lands selected by the State of Iowa, under the 8th section of the act of 4th September, 1841, situated within the limits of the Des Moines River grant, under which (the grant) the State is entitled to them, and you are advised that when the grant is adjusted, which will be in a short time, so far as the surveys have progressed, the approval of the selections so situated will be rescinded, and the State authorized to select others in lieu thereof.

You are again advised that the books and files of this office show no military reservation on section 19, 89 N., 28 W., and upon enquiry at the War Department, it appears that there has never been any order to reserve it. It will therefore be certified to the State under the Des Moines grant.

I am, very respectfully, your obedient servant,

CHA'S S. FRAILEY,
Acting Commissioner.

GEO. GILLASPY, Esq.,
Ottumwa, Iowa.

That, on the 13th of July, 1848, there were approved to the State of Iowa, by R. J. Walker, Secretary of the Treasury, under said grant of August, 1846, lands lying below the Raccoon Fork to the amount of 321,028.03 acres, 53,473.17 acres of which were by the State conveyed to the Des Moines Navigation and Railroad Company, the balance thereof having been disposed of by the State and its board of public works, prior to June 9th, 1854.

The following amounts of lands were, at different times, approved

and certified to the State of Iowa, under this grant, all lying above the Raccoon Fork:

October 30th, 1851	81,707.93 acres.
March 10th, 1852	143,908.37 "
December 17th, 1853	33,142.43 "
December 30th, 1853	12,813.51 "
	271,572.24

212,636.31 acres of which were, by the State, conveyed to the Des Moines Navigation and Railroad Company, the balance, 58,932.93 acres, having been sold by State and its board of public works prior to the contract between the State and said company, June 9th, 1854.

Among the lands so certified and approved, were the lands mentioned in the pleadings in this suit.

The following is the heading of the list which was approved by the Secretary of the Interior on the 17th December, 1853, together with the terms of approval; a similar heading and approval was appended to the list approved on the 30th of the same month: "A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork, and within five miles of the Des Moines River, so far as the surveys
270 have progressed, falling to the State of Iowa, under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved."

Which list was approved in these words:

"DEPARTMENT OF THE INTERIOR,
"*December* 17, 1853.

"The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

"R. MCCLELLAND,
"*Secretary.*"

As often as any of said lands were so certified and approved, an entry was made upon the tract-books or register of the public lands, contained among the records of the General Land Office, showing the lands so approved, by township and district and section, as follows:

Township No.——, range No. ——, district of —— ——.

Description of the tract.				Contents.		Rate per acre.		Purchase-money.		Name of the purchaser.
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
										Granted to the State for Des Moines River improvement per act of 8th August, 1846. Approved 17th December, 1853. (Or other date, according to the time when the particular section was approved to the State by the Secretary of the Interior.)

Such an entry was made upon said tract-books and records of the land office as to all the lands which were approved to the State of Iowa under the act of 8th August, 1846, including the lands in question in this suit; and said entries remained upon said records uncancelled, and without any qualification during the whole period from the time when they were originally made until after the decision of the Supreme Court of the United States in the case of "Litchfield vs. Dubuque and Pacific Railroad Company," reported in 23d Howard, p. 66.

The lands so approved were, at the time of approval, marked and indicated upon the township maps or plats in the General Land Office, as being included in and forming part of the grant of lands made to the State of Iowa by said act of 8th Aug., 1846, and they remained so marked and indicated all the time thenceforth until after the date of said decision; and during the same period the said lands were also marked and indicated upon the township maps and plats kept in the land offices of the United States in the State of Iowa, in the districts where said lands are situated, as having been granted to said State under and by virtue of said act of 8th August, 1846. And after the date of
271 the order by the General Land Office of 1st June, 1849, (hereinbefore set forth,) directing said lands to be withheld from sale, the said lands were always, by the General Land Office and by the Department of the Interior, withheld from sale or pre-emption, and were by said Land Office and Department of the Interior considered and held as appropriated, and reserved for the purpose of satisfying the grant made by said act, under the directions and order of the officers of the United States having charge and control of the public lands of the United States up to and until the decision aforesaid.

As fast as said lands were approved to the State of Iowa, the State assumed the control of and exercised title over the said lands, including those above as well as those below the Raccoon Forks, and continued to hold the title and exercise control over the said lands until it, from time to time, sold the same, and thenceforth the State, or its grantees, has openly and notoriously claimed the title and exercised acts of ownership over the same, and many of the grantees of the State were in the actual possession of the respective portions of said lands purchased by them of the State at the time of the passage of the act of Congress of May 15, 1856, and the act of the gen. assembly of the State of Iowa of July 14, 1856; and on the 22d of March, 1858, and on the 3d day of May, 1858, and at these several dates aforesaid, many of the grantees of the State had sold the tracts purchased by these, or parties thereof, to vendees, who were then in possession of the respective tracts purchased by them.

[This in place of erased portion under.]

After the making of said grant by the act of 8th August, 1846, the State proceeded, from time to time, as in said act authorized, to sell and dispose of said lands, applying the proceeds to the improvement of the Des Moines River, as contemplated in said act; and on 9th June, 1854, the State, by its authorized agents, made a contract with the Des Moines Navigation and Railroad Company, in and by which the said company agreed to finish said improvement as contemplated in said act of Congress, and specified in said contract, and to expend for that purpose all necessary sums, to the amount of $1,300,000; and in consideration of such contract and expenditure, and in payment for the same, the State sold and agreed to convey to said company, from time to time, and in the manner provided by said act of Congress, the whole balance of the lands which have been certified and approved to the State under said

act, and which then remained unsold, and all other lands which should be thereafter certified and approved to the State of Iowa under said act.

[In connection with this paragraph it is stipulated that the contract of June 9 shall be put in evidence.]

Among the lands thus sold to said company were the lands mentioned in the pleading in this suit.

After the making of said contract the said company proceeded with the work upon said improvement, and as the said improvement progressed, and in accordance with said act of Congress the State, from time to time, by its regular and authorized officers, issued to said company in payment for work done by it upon said improvement, and in pursuance of the aforesaid contract, sundry certificates, in form and substance as follows:

"OFFICE REGISTER OF THE
"DES MOINES RIVER IMP'OVEMENT,
"*Ottumwa, May* 14, 1855.

"I certify that the following lands were sold by me on this 272 day of , to the Des Moines Navigation and Railroad Company in pursuance of the contracts and agreements with the said company for the construction of said Des Moines River improvement, to wit:"

(Here follows a long list of lands, set forth specifically by section, township, and range, together with the number of acres in each tract respectively, including the lands mentioned in the declaration in this suit.)

(Signed) "GEORGE GILLESPIE,
"*Register, &c.*"

The said George Gillespie was at the said dates register of the Des Moines improvement, and was the proper person to transfer said lands and issue the said certificates.

On the 6th of January, 1854, John Wilson, Commissioner of the General Land Office, addressed to George Gillaspy, esq., register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a certified copy of a list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State of Iowa under the 8th section of the act of the 4th September, 1841, on the 20th July, 1850, and erroneously approved the 20th February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant, now approved by the Secretary of the Interior under the act of 8th August, 1846. The quantity of land embraced by the list is twelve thousand eight hundred and thirteen acres and fifty-one hundredths of an acre, (12,813.51.)

Tho's H. Benton, jr., esq., superintendent of public instruction, has been advised that the State is authorized to select an equal quantity under the act of 1841, in lieu thereof.

I am, very respectfully, your obedient servant,
JOHN WILSON, *Commissioner.*

GEORGE GILLASPY, Esq.,
Register State Land Office, Ottumwa, Iowa.

On the 6th of January, 1854, the Commissioner of the General Land Office wrote to the superintendent of public instruction of the State of Iowa, as follows:

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a copy of a list of lands falling to the State of Iowa, under the act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, and approved before the grant for the improvement of the Des Moines River was adjusted as far as the townships embraced by the lists, which was approved by the Secretary of the Interior on the 30th ultimo. The quantity of land thus approved under the act of 8th of August, 1846, is twelve thousand eight hundred and thirteen acres and fifty-one hundredth' of an acre, (12,813.51.)

These lands were selected on the 20th of July, 1850, and embraced by lists Nos. 49 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere.

Be pleased to acknowledge the receipt of this communication.

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

THOMAS H. BENTON, Jr., Esq.,
Superintendent of Public Instruction, Iowa City, Iowa.

273 On the 6th of January, 1854, the Commissioner of the General Land Office addressed and forwarded to Geo. Gillaspy, register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a certified copy of a list of tracts falling to the State of Iowa under the act of the 8th August, 1846, above the Raccoon Forks, so called, so far as the surveys have progressed, and not heretofore approved, approved by the Secretary of the Interior on the 17th ultimo, amounting in the aggregate to thirty-three thousand one hundred and forty-two acres and forty-three hundredths of an acre, ($33,142\frac{43}{100}$.)

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

GEO. GILLASPY, Esq.
Register of State Land Office, Ottumwa, Iowa.

That, on the 7th of January, 1854, the Commissioner of the General Land Office addressed and forwarded to the register of the State land office at Des Moines, Iowa, the letter of which the following is a copy:

GENERAL LAND OFFICE, *January 7th*, 1854.

SIR: I enclose a copy of a list of the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2nd March, 1849, and of the Secretary of the Interior of the 29th October, 1851, approved by the Secretary of the Interior on the 17th ultimo.

The quality embraced by the list is 33,142.43 acres.

You will please have them entered on your tract and plat books.

I also enclose a copy of a list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, on the 20th July, 1850, and erroneously approved on the 20th February, 1851, previous to the adjustment of the grant for those townships, and before it was known that they belonged to the State under the Des Moines River grant.

This list was approved on the 30th ult., and embraced 12,813.51 acres.

You will please note these selections upon your plat and tract books, as approved under act of 8th August, 1846, and cancel the approval of the same as selections under the act of 4th September, 1841.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

REGISTER OF THE LAND OFFICE,
Fort Des Moines, Iowa.

That, on the 25th of January, 1855, the general assembly of the State of Iowa passed an act entitled "An act for the relief of settlers on certain river lands," the preamble to which, and the first and eighth sections whereof are as follows:

An act for the relief of the settlers on certain river lands.

Whereas a large number of persons have contracted with the
274 proper school officers to purchase lands as school lands, being part of the 500,000 grant, and have paid part of the purchase-money down, and have entered upon the said land and made valuable improvements upon the same; and

Whereas the State of Iowa have located part of the grant for the improvement of the Des Moines River upon said lands thus purchased and settled upon; and

Whereas doubts have arisen as to the legality of said location: Therefore,

SEC. 1. *Be it enacted by the general assembly of the State of Iowa*, That the commissioner and register of the "Des Moines River improvement" be required to represent the facts stated in the foregoing preamble to the Des Moines Navigation and Railroad Company, and enter into negotiation with said company for the sale of said lands described in said preamble, to the persons who have contracted with the several school fund commissioners for the same, at one dollar and twenty-five cents per acre.

That all moneys received for land sold under the provisions of this act shall be paid over to the proper officers of the Des Moines Navigation and Railroad Company.

That, on the 10th of May, 1856, the Commissioner of the General Land Office sent to the registers and receivers of the several land offices in Iowa, by telegraph, a communication, of which the following is a copy:

GENERAL LAND OFFICE, *May* 10, 1856.

You will suspend from sale or location all the lands in your district until further orders.

Acknowledge the receipt of this dispatch by telegraph and mail.

THO'S A. HENDRICKS,
Commissioner.

REGISTERS AND RECEIVERS:
Council Bluffs, Iowa.
Dubuque, "
Chariton, "
Fort Des Moines, "

That, on the 12th of May, 1856, the Commissioner of the General Land Office addressed to Hon. Geo. W. Jones a letter, of which the following is a copy:

GENERAL LAND OFFICE, *May 12th*, 1856.

Hon. GEO. W. JONES,
U. S. Senate.

SIR: In reply to the inquiries in your letter received this morning, I have to state according to a hasty estimate at this office:

1st. That the lands along the Illinois Central Railroad were offered between the years 1816 and 1844, embracing a period of 28 years, assuming 14 years as the average, and adding 12, the term elapsed since 1844, we have the average term, the lands have been in market 26 years, hence the price under the graduation act would be 25 cents per acre.

2d. See enclosed printed statement in Commissioner's annual report of November 30, 1854, pages 17 and 18, which shows as follows:

Sold within six-mile limits, 765,690 acres, for $1,936,075; average price, $2 54 per acre. Sold within fifteen miles, including the above, 2,377,994 acres, for $3,989,210; average price, $1 68 per acre.

275 3. The enclosed statement, marked "A," shows the estimated length of the railroads, and the amount which would accrue to the State under the bill.

I am, respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

"A."—*Iowa railroad grants.*

Routes.	Estimated miles.	Granted.
Dubuque, via Fort Dodge, to Iowa City	295	1,132,800
Lyons City, via Mauquoketa, due west to Missouri River	325	1,248,000
Davenport, via Iowa City, Fort Moines, to Council Bluffs	290	1,113,600
Burlington, west to mouth of Platte River	255	979,200
Total	1,165	4,473,600
Deduct for Des Moines River grant, which crosses 4 times, 10x4	40	153,600
Leaves	1,125	4,320,000

Quantity to which the State would be entitled if to be had within the alternate sections within fifteen miles of the road.

Whole surface of Iowa is ..... 32,584,960 acres.
Estimated vacant, 30th September, 1855 ..... 13,874,163 "
Amount that would be liable for selection, if the lands were all vacant, 1,125x15x640 acres..... 10,800,000
Therefore, as 32: 13:: 10,800,000— 4,387,500

The estimated amount vacant and liable to selection for the grant within the prescribed limits, and equal to the quantity granted. But the deficiency on one route cannot be made up on another; it is not possible, therefore, that the lands will hold out.

That, on the 15th of May, 1856, the Commissioner of the General Land Office addressed to the register and receiver of the U. S. land offi'e at Des Moines an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *May 15th*, 1856.

REGISTER AND RECEIVER,
F't Des Moines, Iowa.

GENTLEMEN: By my telegraph dispatch of the 10th inst., you were directed to suspend from sale or location all the lands in your district until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running from the Mississippi River to the Missouri, by a bill which had passed both Houses of Congress.

Said bill, having this day been approved by the President, has become a law, and you will continue to withhold from sale or location until further orders.

It is designed to adjust these several grants with as little delay as practicable, in order that the lands remaining to the United States may be returned to market.

I am, very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

276 That, on the 9th of June, 1856, the Secretary of the Interior addressed the Commissioner of the General Land Office an official communication, of which the following is a copy:

DEPARTMENT OF THE INTERIOR, *June 9th*, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th March, and enclose therewith several letters and arguments which have been received here since the date of your report.

Having submitted the subject to the Attorney General for his opinion upon the questions involved, I enclose a copy of such opinion furnished me under date of the 29th ult., and also a letter under date of the 5th inst., from the Hon. Reverdy Johnson, (the attorney for the claimants under the grant,) in regard to the conditions upon which subsequent approvals up to the limits of the State of Iowa, are recommended by the Attorney General to be made. In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney General as contained in the paragraph near the close of such opinion, beginning with the words: "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with "you can with safety award to them the residu', of the claim up to the northern boundary of the State." It will be perceived from the endorsement on Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department, but no further action will be taken until the parties are heard from on this point.

In the certificate of approval hereafter prepared for my signature on any list submitted, the fact should be stated that, the approval being based upon the prior action of the Department and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part in this limit, and an abandonment of

all claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

Respectfully your obedient servant,

R. McCLELLAND, *Secretary.*

To Hon. THO'S A. HENDRICKS,
Commissioner of the General Land Office.

On the 21st of March, 1856, the Commissioner of the General Land Office decided that the grant was limited to the Raccoon Fork. The matter was then brought anew before the Secretary of the Interior, and was by him referred to the Attorney General.

The Attorney General (Cushing) replied to Secretary McClelland, in an elaborate opinion, dated 29th May, 1856, in the course of which he said: "In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undue that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Gov-
277 ernment. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant, than in a matter of account, no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony." (Mr. Crittenden's opinion of Dec. 28, 1852. See also, Bank of Metropolis vs. The United States, XV Peters, p. 400; ex parte Randolph, II Brocken., p. 470.)

"If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties the latter would have had their remedy at law. But what you have done is final as respects the United States."

* * "It is one thing to undo an act done, and quite another thing to cease to persevere in a previous line of action as to acts of a continuous nature.

"It might, with much plausibility, be argued that while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so, what Mr. Stuart did, though final as to lands actually approved, was but a precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination, as respects any other lands in the same right claimed by the State, and that, in executing the same law, you are to execute it according to your own understanding of its force and effect. That may be so, and yet the contingency is not exactly of the application of a precedent to a new case, for the grant to Iowa is one thing, although it be composed of parts or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above Raccoon Fork, and he proceeded to execute, and did execute, that decision in part. And the true question is, of the completion of the execution by you of what had been partially executed by Mr.

Stuart. I think it must be a clear case of manifest illegality in the work commenced and half executed by one Secretary, to justify the abandonment of it by his successors. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions on the part of Mr. Walker and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stuart. In my judgment, it is not for the good of the public service, while it is prejudicial, and sometimes grossly unjust to private interests concerned, for the executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that, upon better reflection at the outset, a different decision would have been rendered. To indulge in such oscillation of action, under the influence of ordinary causes of perturbation, is not seemly on the part of the Government.

"In the present case of lands above the Raccoon Fork claimable by the State within its limits, twenty-six fifty-sixth parts—nearly half—the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that a determination of the question proper to be acquesced in by you as a settled fact of administration." * * * * * * * *

(It is stipulated that either party may if he desires, read on the hearing the whole of this opinion.)

278 Subsequently, and on the 10th November, 1856, application was made by letter through Hon. Reverdy Johnson, in behalf of the Des Moines Navigation and Railroad Company, to the Secretary of the Interior, to issue patents for the lands which had been certified and approved to the State of Iowa under the said act of 8th August, 1846, and by the State conveyed to said company, of which the following is a copy:

WASH'N, 10 *Nov.*, '56.

SIR: In the matter of the Des Moines River improvement grant, I applied in behalf of the comp'y to whom the State assigned the lands granted by the U. States, to have patents issued for the selections made and duly approved of sections below and above the Raccoon Fork. I am aware that this of itself is supposed by your Department to be sufficient to vest the title in the company, but in consequence of the different construction of the grant made by the U. States, a cloud rests over such title which, in a great measure, renders the lands unavailable. This would be perhaps, entirely removed, if patents were issued and it was with that view that I applied for them. It seemed to me that as no possible inquiry could result from their issue to the U. States, and the security of the grantees be made the better and they enabled to dispose of the property to better advantage, that there could be no objection to the gratification of my application.

The general power to issue patents to give title to all lands in any way acquired from the U. States seemed to me, to be clear, and this as an incident to the actual grant; that in this view no particular statutory authority need exist, and that if such authority was given in any case it was but cumulative. Please consider the matter at your earliest leisure, and give me the result. Should you not agree with me as to the patents, say if I am not correct in the opinion that the selections and approval, pass the entire title of the U. States as effectually as patents would pass it.

With great regard, your obedient servant,

REVERDY JOHNSON.

Honorable Mr. MCCLELLAND,
&c., &c., &c., Washington.

To this application the Secretary replied as follows:

"DEPARTMENT OF THE INTERIOR,
"*November 10th*, 1856.

"SIR: Having duly considered the subject brought to my attention personally a few days since, and specially referred to in your letter of this date, I have not been able to satisfy myself that the Department has any power to issue patents, where the law not only does not authorize it to be done, but provides another mode for the passing of the title to the lands in question; and the practice having been in accordance with this view of the absence of authority, I deem it proper to adhere to it.

"In the opinion of the Attorney General of the 29th of May last, in the Des Moines River case, it is stated: 'In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was in each case, done by the competent legal authority, and binds the Government. One Secretary has no more
279 lawful power to undo a thing lawfully done by his predecessor in a matter of grant, than in a matter of account; no more right, where a settlement is in favor of a third party than where it is in favor of the United States. Where a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion, of December 28th, 1852, MS.; see also Bank of Metropolis vs. The United States, XV Peters, p. 400; ex parte Randolph, 11 Brocken., p. 470.')

"If the acts of Mr. Stuart and yourself, in this respect, had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final, as respects the United States.

"In the foregoing views of the Attorney General I have concurred; and for the reason that the acts of approval by Mr. Stuart and myself have divested the United States of the title, I can see still further ground to decline issuing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment, like selections not yet approved.

"Respectfully, your obedient servant,

"R. McCLELLAND,
"*Secretary.*

"To Hon. R. JOHNSON, *Baltimore, Md.*"

The General Land Office decided, in 1856, not to certify any more lands to the State under the grant of 8th August, 1846. Thereupon the said Des Moines Navigation and Railroad Company suspended the work upon said improvement, and afterwards said company and the State made a final settlement, as follows:

The general assembly of said 'tate, of 22d March, 1858, passed a joint resolution as follows:

"Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas, disagreements and misunderstandings have arisen, and do now exist,

between the State of Iowa and said company, and it being conceived to be to the interest of all parties concerned to have said matters, and all matters and things between said company and the State of Iowa, settled and adjusted; now therefore, be it

Resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water-rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to th' said company; and also surrender to said State the dredge-boat and its appurtenances, belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said company, or its assignees, shall have right to all of said lands as herein granted to them, as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are $25{,}487\frac{87}{100}$ acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

"And it is further agreed that said company release and convey to the State of Iowa or its representatives, all materials of every kind and description, prepared for or intended for the construction of locks or dams in said improvement, wheresoever the same may be; and the State shall take the existing contracts, but no other liabilities of any name or nature, except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date, beyond the percentage retained from the contractors under their agreements; and the said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

"The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement, (as fast as he may require the same to liquidate existing liabilities against said Des Moines' River improvement,) on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificate of indebtedness against said improvement not exceeding in amount the sum of $11,000, which are now due and unpaid, are to be received in part pay-

ment of said sum of twenty thousand dollars: *Provided*, That no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant: *And provided also*, That if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all liabilities as aforesaid against said improvement, and the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to The Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided further*, that if the said Des Moines Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state, within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto."

281

The Des Moines Navigation and Railroad Company ratified and accepted the proposition embodied in the joint resolution within the time and in the manner therein specified. The company paid to the State the sum of $20,000, and released and conveyed to the State the dredge-boat and materials in said resolution mentioned, and in all respects, on its part, fully complied with all the terms of settlement in said joint resolution provided.

Thereupon the governor of the State of Iowa, addressed to the President of the United States a certificate as follows:

EXECUTIVE CHAMBER, IOWA,
Des Moines, April 28, 1858.

To His Excellency JAMES BUCHANAN,
President of the United States.

I, Ralph P. Lowe, governor of the State of Iowa, as required by act of Congress, approved August 8th, 1846, "granting certain lands of the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," do hereby certify that there has been expended from time to time prior to the date hereof, on the improvement of said river, as the work has progressed, and the money has been required under certain contracts made by the State of Iowa, with the Des Moines Navigation and Railroad Company, the sum of three hundred and thirty-two thousand six hundred and thirty-four $\frac{4}{100}$ dollars, ($332,634 04,) and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress, approved as aforesaid, there will be conveyed to said Des Moines Navigation and Railroad Company two hundred and sixty-six thousand one hundred and seven $\frac{23}{100}$ acres (266,107$\frac{23}{100}$ acres) of the land belonging to said grant, and which have been certified and approved to the State of Iowa, under said act for the prosecution of the improvement of said river Des Moines.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed, together with my signature.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

And afterwards, on the 3d of May, 1858, there was executed and delivered to the Des Moines Navigation and Railroad Company a certain deed or patent, under the seal of the State as follows:

"This indenture, made this third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth:

"That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa, and the said Des Moines Navigation and Railroad Company, for the improvement of the Des Moines River, does hereby sell, grant, bargain, and convey to
282 the said Des Moines Navigation and Railroad Company the following referred to and described lands, to wit:

(Here follows a description of several thousand acres of land, set forth specifically by sections, townships, and range, including the lands mentioned in the pleadings in this suit.)

"To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

"In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereto affixed.

THE GREAT SEAL OF THE STATE OF IOWA.

"Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

(Signed) "RALPH P. LOWE.

"By the governor:

(Signed) "ELIJAH SELLS,
"*Secretary of State.*"

"This is to certify that the foregoing deed was received from the governor, June 10, 1858, and recorded in Des Moines River records, book A, pages 41, 42, 43, and 44, June 18, 1858.

(Signed) "T. S. PARRIN,
"*Register of the State Land Office,*
"By D. S. WARREN, *Deputy.*"

On the same day there was also executed and delivered to said company several other similar patents, under the seal of the State, and the aggregate amount of the land described in and conveyed by all of said patents was 266,107.23 acres; of which about 58,830 acres were below, and the remainder above Raccoon Fork.

On the 18th day of May, 1858, there was also executed and delivered to the said company a deed and patent under the seal of the said State, of which the following is a copy:

"This indenture, made this 18th day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties

of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of a joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the Des Moines Navigation and Railroad Company the following-described lands, to wit, all lands granted by an act of Congress, approved August 8th, 1846, to the Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company or its assigns shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but
283 at the costs and cha'ges of said company; and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company, are 25,488.87 acres lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

"To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

"In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

"Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

[L. S.] "RALPH P. LOWE.

"By the governor:

"ELIJAH SELLS,
"*Secretary of State*,
"By JNO. M. DAVIS,
"*Deputy*."

"This is to certify that the foregoing deed was received from the governor, June 10th, 1858, and recorded in Des Moines River records, book 'A,' pages 45 and 46, June 18, 1858.

"T. S. PARRIN,
"*Register of the State Land Office.*
"D. S. WARREN,
"*Deputy*."

Said State caused said patent to be duly recorded in Iowa, and also filed an original or copy of said patent in the office of the Commissioner of the General Land Office, at Washington, with a list of the lands intended to be conveyed thereby, of which the lands mentioned in the declaration in this suit were part.

On the 3d day of March, 1857, the Commissioner of the General Land

Office addressed the following official communication to Hon. Bernhart Henn:

GENERAL LAND OFFICE, *March* 3, 1857.

SIR; In reply to your communication of the 28th ultimo, requesting a statement of the quantity of land which will enure to The Dubuque & Pacific Railroad Company in Iowa, under the act of Congress, approved 15th May, 1856, subject to the terms and conditions in said act and to the acts of the legislative assembly of said State, the following estimates, carefully prepared at this office, are communicated:

1. The length of The Dubuque & Pacific Road and branch to Tete des Morts, measured on the official map of the route, is	331½ miles.
Which, at six sections, or 3,840 acres per mile, would make	1,272,960 acres.
Deduct for water	21,920 "
Leaves	1,251,040 "

284 To which the company would be entitled, if found vacant in the odd-numbered sections within fifteen miles of the road.

2. The estimated quantity of vacant in the odd-numbered sections within *within* fifteen miles of the road, and liable for selection, (all situated in Iowa,) is as follows:

In the Sioux City district	880,200 acres.
" Fort Dodge "	415,360 "
" Dubuque "	11,045 "
Total	1,306,605

Which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant above the Raccoon Fork within the fifteen-miles limit of the railroad grant, and not yet decided.

It appears, therefore, from the above, that The Dubuque & Pacific Railroad Company will obtain their full complement of land under the grant, estimated to cover 1,251,040 acres.

I am, very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

Hon. BERNHART HENN,
Agent of the State of Iowa and the Railroad Companies,
Washington, D. C.

That the general assembly of the State of Iowa passed an act, which took effect April 14, 1858, of which the following is a copy:

An act appointing a commissioner to procure the lands granted for improving the navigation of the Des Moines River, to be certified to the State.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That Cha's Mason, of Des Moines County, is hereby appointed a commissioner, whose duty it shall be to do all acts in behalf of the State which may be necessary to procure the lands belonging to the grant made to the then Territory of Iowa, by an act of Congress, approved August 8th, 1846, for the improvement of the navigation of the Des

Moines River, in said Territory, to be certified and set apart to said State by the proper Department of the General Government, and any act or agreement as to the amount of land to which the State may be entitled under said act of Congress, made or concluded by said agent, is hereby ratified and confirmed.

SECTION 2. That the State of Iowa shall not be liable in any manner for any damages growing out of any act or agreement of said agent hereby appointed, nor shall the State be held liable for any expense in any manner for the salary or per diem of said agent.

SECTION 3. This act to take effect and be in force immediately after its publication in the Iowa State Journal and Iowa Weekly Citizen.

Approved March 22d, 1855.

That, as agent or commissioner of the State under the said act, the said Charles Mason, on the 30th of April, 1858, addressed to the Secretary of the Interior a communication, of which the following is a copy:

WASHINGTON, *April 30th*, 1858.

SIR: In our recent conversation relative to the settlement of the controversy in regard to the extent of the Des Moines River grant,
285 you expressed a readiness to abide by the proposition of your immediate predecessor, founded upon the opinion of the late Attorney General, dated May 29th, 1856. That proposition was that the decision of Mr. Secretary Stuart, of 29th October, 1851, founded on that of Mr. Walker's, of March 2, 1849, should be adopted as final and conclusive. As agent for the State of Iowa, with full power over this subject, I am willing to accept this proposition thus far. But the late Attorney General has arrived at a conclusion that this rule will confine the grant to the present limits of the State of Iowa, and one branch of the proposition presented by your predecessor has accordingly been, that the State should relinquish all claims to lands north of her present boundaries. Fully satisfied that a fair interpretation of the decisions of Messrs. Walker and Stuart would lead to no such conclusion, and that the opinion of the late Attorney General in this respect was palpably erroneous, mainly in consequence of mistakes in regard to matters of facts, I desire this branch of the subject to remain open, and that I be permitted to show the truth of what I now state, in such a manner as you may think reasonable and proper.

The State of Iowa desires protection in all her just claims, and she will ask for nothing more. If, upon a proper examination, it be found that a fair construction of the decision of Mr. Stuart, founded on that of Mr. Walker's, will limit the grant to the present boundaries of the State, I will at once, on the part of the State, relinquish all claim to such lands as lie in Minnesota, and thus terminate this long controversy.

Yours, very respectfully,

CHA'S MASON,
Agent and Attorney for Iowa.

Hon. JACOB THOMPSON,
Secretary of the Interior.

In answer to this letter, the Secretary of the Interior, on the 8th of May, 1858, replied as follows:

DEPARTMENT OF THE INTERIOR,
Washington, May 8th, 1856.

Hon. CHARLES MASON,
Agent of the State of Iowa.

SIR: I have to acknowledge the receipt of your communication of the

30th ultimo, relative to the settlement of the controversy as to the extent of the Des Moines River grant.

The decision of my immediate predecessor, of the 9th June, 1856, I regard as a proposition made to the State of Iowa for a final adjustment, and your present communication is not an acceptance of the proposition on the part of the State. When it is considered that nearly two years have elapsed, and no formal acceptance has in the meantime been presented here, if this be the only communication you have to make, I feel authorized to regard your letter, now before me, as an authoritative rejection of that proposition.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

On the 22d of March, 1858, the general assembly of the State of Iowa passed an act which took effect by publication April 7, 1858, the first section of which is as follows:

286 CHAPTER 99.—*Land grant to the Des Moines Valley R. R.*

An act disposing of the grant of land made by an act of Congress granting land to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That all the lands granted to the then Territory of Iowa, by an act of Congress, approved August eighth, eighteen hundred and forty-six, entitled "An act granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory," and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government, and also all stone, timber, and other material turned over to the State by the Des Moines Navigation and Railroad Company in settlement with the State of Iowa, be, and the same are hereby, disposed of and granted to The Keokuk, Fort Des Moines, and Minnesota Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river by way of the city of Des Moines to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, excepting all the lands belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to The Des Moines Navigation and Railroad Company by virtue of a settlement now pending between the State and said company; and also, so much of the said timber, stone, and other materials as may be used in the completion of the locks and dams at Croton, Plymouth, Bentonsport, and Keosauqua, this grant to become operative so soon as Congress shall assent to or permit a diversion, or the title thereto shall become vested in the State so as to be subject to grant.

In 1859 a petition from citizens of Iowa was addressed to the President, asking that certain specified townships of the lands above the Raccoon Fork, which had been so approved to the State under the act of Aug. 8, 1846, should be brought into market. In reply thereto, the Commissioner of the Land Office addressed to Senator Jones, of Iowa, the following letter:

GENERAL LAND OFFICE,
February 17th, 1859.

SIR: I have the honor to acknowledge the receipt of the petition referred by you to the Department, on the 12th inst., of sundry citizens of Fort Dodge district, Iowa, asking that certain lands in said district may be brought into market, and in regard to the matter to state that the lands referred to by the memorialists are withheld from market in view of the grant to Iowa by act of August 8, 1846, to aid in the improvement of the Des Moines River.

Very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

Hon. G. W. JONES, *U. S. Senate.*

That, on the 26th of March, 1859, the Secretary of the Interior addressed to the Commissioner of the General Land Office an official letter, of which the following is a copy:

287 DEPARTMENT OF THE INTERIOR,
Washington, March 26, 1859.

SIR: I transmit to your office herewith a copy of the opinion given on the 22d November last, by the Attorney General of the United States, as to the extent of the grant to the State of Iowa, to aid in the improvement of the navigation of the Des Moines River, by the act of Congress approved August 8th, 1846, and also a copy of my communication of the 25th August, which elicited this opinion.

In the views of the Attorney General, as thus expressed, I fully concur, and it therefore only remains for me to inform you that no future action can be taken in this Department or in your office, which will recognize the grant as extending above the Raccoon Forks of the Des Moines River.

Lists of selections which have been approved by my predecessors will be respected by your office.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

At the December term of the Supreme Court of the United States, in the year 1859, and on or about the 9th day of April, 1860, a decision was made by said court in the case of Litchfield vs. The Dubuque and Pacific Railroad Company, which is reported in 23 Howard's Rep't, 66 page.

When such decision became known at the General Land Office, the Commissioner, on the 18th of May, 1860, issued and sent the registers and receivers of the U. S. land office at Des Moines and Fort Dodge, Iowa, a printed notice, of which the following is a copy:

No. 661.—*Notice respecting certain lands in the State of Iowa.*

Notice is hereby given that the lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Forks of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved, for the time being, from sale or from lo-

cation, by any species of scrip or warrants, nothwithstanding the recent decision of the Supreme Court against them.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual bona-fide settlers, holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May* 18, 1860.

Such notice was at once posted in a conspicious place in said land offices in Iowa, and so remained posted until the close of the year 1863, and in the office at Des Moines the same still remains posted.

On 25th May, 1860, W'm T. Stieger, an agent in behalf of The Dubuque and Pacific Railroad Company, filed in the General Land Office a list of lands laying within the claimed limits of the Des Moines
288 River grant above the Raccoon Fork, and claimed to select some of them for said railroad company, under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added:

"The tracts in said list are above the Raccoon Fork and within the lands that had been selected under the Des Moines River grant by act of 8 August, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant, above the said fork, the present lists are presented by you. As the matter has been placed in train for congressional intervention, no action can be taken in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

"Respectfully, your obedient servant,

"JOS. S. WILSON,
"*Commissioner.*"

On the 7th July, 1860, the Commissioner of the General Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

"Without passing upon, or, in fact, considering the question as to the right of the State, under the railroad grant to these lands, which, at the date of the grant, had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

"Respectfully, your obedient servant,

"JOS. S. WILSON,
"*Commissioner.*"

That, on the 13th of August 1860, the Commissioner of the General Land Office presented to the Secretary of the Interior a proclamation for the sale of public lands at the Fort Dodge and Sioux City offices, of which the following is a copy:

GENERAL LAND OFFICE, *August* 13, 1860.

SIR: I have the honor to lay before you—No. 1—a proclamation of

public lands in the Fort Dodge and Sioux City districts, Iowa, embracing 1,270,623 acres heretofore unoffered, the sales to be held as follows:

At Fort Dodge, November 19, 1860.

At Sioux City, November 26, 1860.

This (No. 1) proclamation embraces the lands in the yellow shades on the enclosed diagram "A;" also, those in the blue shades. The blue shades are lands above the Raccoon Forks, which had been claimed under the Des Moines River grant before the recent decision of the Supreme Court. It does not, however, embrace any of the lands south of the blue shades and above the Forks, which had been certified to the State under sanction of your predecessors, according to the then claimed limits of the Des Moines grant.

No. 2 is an alternate proclamation for 496,730 acres, excluding the blue-shaded lands, and only embracing the yellow, and is submitted in case it should be decided to await action by Congress over the whole claimed extent of the Des Moines grant.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

289 (Indorsement:)

DEPARTMENT OF THE INTERIOR, *August* 14, 1860.

Respectfully submitted to the President, with the recommendation that the lands be proclaimed for sale according to the form, No. 1, enclosed.

J. THOMPSON, *Secretary.*

[This proclamation was signed by the President under date of August 14, 1860, and afterwards advertised, according to the printed form, as proclamation No. 665.]

On the 6th September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
Washington, Sept. 6th, 1860.

SIR: In the absence of any direct application by the governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines River and the grants for aid in constructing railroads, my opinion is, that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letter of the 7th July last and 3d instant are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On 3d November, 1860, the Secretary addressed a letter to Hon. Geo. W. Jones, Senator from the State of Iowa, in which he said:

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connection with the letter of Mr. Steiger, agent of The Dubuque and Sioux City Railroad Company of the 1st instant, both relating *the* to the certification to the State of Iowa of lists of odd-numbered sections of land within the six and fifteen mile limits of the railroad, "from the city of Dubuque to a point on the Missouri River, near to Sioux City."

For your information I herewith enclose copies of my letters of the 6th September last to the Commissioner of the General Land Office, and of the 1st of October to Mr. Steiger, and in reply to your letter would state that, as respects those tracts within the limits of the railroad grant which have already been certified to the State of Iowa by my predecessor, under the previous grant of 8th August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, and a direct demand from the State authorities for lists under the later grant, I deem it proper to suspend action at present, so far as the claims interfere. The subject of these opposing claims is involved with proposed legislation pending in Congress, and the State authorities still assert the equity of the title which has been recognized by my predecessors, though since declared to be invalid by a decision of the Supreme Court of the United States.

* * * * * *

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. GEO. W. JONES, *of Iowa, present.*

290 That, on the 2d day of April, 1860, the general assembly of the State of Iowa passed an act, of which the following is a copy:

CHAPTER 63.—*Des Moines River lands.*

An act making provisions for the settlement of all liabilties of the State growing out of the sale of certain lands of the Des Moines River improvement grant as school lands.

Whereas, certain contracts have been entered into between school-fund commissioners, acting under the directions of the "superintendent of public instruction," an officer of this State, and citizens of the State, for the sale and purchase of a part of the school lands of the State, known as the 500,000-acre grant; and—

Whereas, the State of Iowa has, by a settlement with the Des Moines Navigation and Railroad Company, conveyed said lands, in whole or in part, to said company; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That, upon the presentation, (or proof of in case of loss,) of any contract for the sale of any of said lands situated in Webster or Hamilton County, executed by John Tolman, late school-fund commissioner of Webster County, or of any certificate of final payment from said school-fund commissioner, or of any patent for said lands under any contract made by said school-fund commissioner to the governor of the State, with proof satisfactory to him by the affidavit of the holder of said contract, certificate, or patent, as the case may be, or such other proof as he may require of the amount of money paid upon any tract or tracts of said land, he shall make a complete statement, showing the amount of money so paid, whether as principle or interest, and the time when each sum of money was paid, and upon the delivering up any contract, certificate, or patent, as the case may be, to the governor, or in case of loss upon proper proof, he shall deliver the statement aforesaid by him signed, to the holder of said contract, certificate, or patent, as the case may be.

SEC. 2. Upon the presentation of said statement so made by the governor, as aforesaid, to the auditor of the State, by the holder, the auditor shall audit the amount due as shown by said statement, with ten per

cent. interest upon each sum so paid on said contract, certificate, or patent, from the time of payment until the time said account shall be audited as aforesaid, and shall draw his warrant on the treasurer of State for the amount so audited.

SEC. 3. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, the sum of four thousand dollars, or so much thereof as may be necessary to pay the claims to be audited under the provisions of this act.

SEC. 4. The contracts, certificates, or patents, or, in case of loss, the proof of said contracts, certificates, or patents, as returned to the governor, shall be filed in the office of the register of the State land office.

SEC. 5. No person holding any contract, certificate, or patent, for any of the lands aforesaid, sold by said commissioner, shall be required to present the same, as provided for under the provisions of this act, and no person presenting the same and receiving the money to be paid as herein provided, shall be prohibited, in any manner, from receiving under color of title or otherwise for many improvements made upon said lands, included in any contract, certificate, or patent, as aforesaid, and no person, receiving money under the provisions of this act shall, in any manner, have any further claim on the State by reason of said contract, certificate or patent, and the receiving of the money as
291 aforesaid, and making settlement with the State, as provided by this act, shall in no way prejudice any legal rights of the party so receiving it, which he may have against any other party, the State only excepted, as aforesaid.

SEC. 6. Any person who may have made valuable improvements upon any of said lands, patented to the said Des Moines Navigation and Railroad Company by the State, and before that time sold by said school-fund commissioner, or the assignee of the person so making such improvements, may commence suit against said company, or the person claiming title under said company for the value of said improvements, and such person shall be entitled to receive the value of said improvements made before the passage of the act conveying said lands to said company from the party who is, at the time of the commencement of such suit, the owner of said land.

SEC. 7. This act to take effect and be in force from and after its publication in the Weekly Iowa State Register and Fort Dodge Sentinel.

Approved April 2, 1860.

Took effect, by publication, April 25, 1860.

That, on the 3d day of November, 1860, the Secretary of the Interior addressed to S. J. Kirkwood, governor of Iowa, an official communication, an extract from which is as follows:

"Again I would remark that, so far as any proposition for congressional aid in behalf of the State was brought to the notice of this Department during the last session of Congress, it was confined, as I understood it, to that portion of the claimed lands which have been heretofore certified by my predecessors, and which has not been included in the lists of lands ordered into market. In respect to that class of lands, I had the honor, in a communication of the 11th June last, addressed to Hon. R. W. Johnson, Chairman of the Committee Public Lands of the United States Senate, to reccommend the report to that body, for adoption by Congress, the form of a joint resolution as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the title which the

United States still retain in the tracts of land along the Des Moines River, and above the Raccoon Forks thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8, 1846, be, and the same are hereby, relinquished to the State of Iowa."

You thus perceive that, so far as my predecessors have acted under the grant of August 8, 1846, I was willing to recommend a confirmation of that action by Congress. I cannot, however, go further.

* * * * * * * *

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

That, on the 2d March, 1861, the Congress of the United States passed and adopted a joint resolution of which the following is a copy:

Joint resolution to quiet title to the lands in the State of Iowa.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the
292 United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

Approved March 2, 1861.

That, on the 10th of April, 1862, the Secretary of the Interior addressed to the Commissioner of the General Land Office an official communication, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1862.

SIR: In answer to your communication of the 18th March last, making certain enquiries respecting the proper disposition of lands in Iowa, granted to the State by act of Congress of 15th May, 1856, and by joint resolution approved March 2, 1861, I am of opinion that they are to be disposed of as said act and resolution directs, without any regard to the act of August 8, 1846, referred to in your letter.

It appears that the action of this department in construing the last named act has been in no respect uniform; not sufficiently so to form a precedent for its present direction; and if it had, there are now other considerations which will control its action. The Supreme Court has decided in the case of the Dubuque & Pacific Railroad Company vs. Litchfield, 23 Howard. p. 66, that the act of 8th August, 1846, did not cede any lands to the State above the Raccoon Forks, and the beforementioned joint resolution declares that the lands above the Raccoon Forks were improperly certified as a portion of the grant of 8th August, 1846.

It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8, 1846.

After completely satisfying the demands of the State embraced by that act, so much of the lands north of the mouth Raccoon Forks as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to bona fide purchasers prior to the 2d March, 1861, will also be certified to the State of Iowa.

This act of 15th May, 1856, granting lands to the State for railroad purposes, except such lands as the rights of pre-emption have attached thereto. This last remark is made because it effects the case of Cilly, and, may be, others claiming pre-emption on said lands.

Very respectfully, your obedient servant,

CALEB B. SMITH,
Secretary.

To the COMMISSIONER GENERAL LAND OFFICE.

Up to the time of receiving said letter, the General Land Office had continued to withhold from sale "the lands lying along the Des Moines River, in Iowa, within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river," in the manner and for the purposes mentioned in its aforesaid printed notice No. 661, dated 18th May, 1860. After receiving said letter the Com-
293 missioner wrote to Ex-Governor Grimes, then a Senator from Iowa, as follows:

GENERAL LAND OFFICE, *April 15th*, 1862.

SIR: I have the honor to enclose herewith a copy of the decision of the Secretary of the Interior, of the 10th instant, in the case submitted to the Department in our letter of the 18th ult., a copy of which was furnished you in a letter of the same date.

Pursuant to said decision, it is proposed to make out a list of lands enuring to the State for railroad purposes, under the act of 15th May, 1856, in so far as the 6 and 15 mile limits of certain routes under that grant traverse the region which had been claimed by the State of Iowa, under the act of 8th August, 1846, for the Des Moines River improvement, above the Raccoon Fork, irrespective of the certified lists to the latter, which are held to be invalid under the decisions of the Supreme Court of the United States, at its December term, 1859.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

Hon. J. W. GRIMES.
United States Senate.

The governor of Iowa replied as follows:

EXECUTIVE OFFICE, IOWA, *May 6th*, 1862.

J. M. EDMUNDS,
Commissioner General Land Office, Washington, D. C.

SIR: Yours of the 15th April last, covering copy of decision of Secretary Smith, in regard to the effect of the grants of lands made to this State by the acts of August 8, 1846, and May 15, 1856, is at hand.

A portion of these lands was once certified to this State as school lands, and the certification subsequently set aside because the Department decided them to be covered by the act of 8th August, 1846.

They were then certified to the State under the last-named act, and now that certificate is set aside because the lands were not covered by

that act. They are now decided to be covered by the act of 1856. This State has sold portions of these lands as school lands, and as lands enuring to the State under the act of 1846, and the titles of many grantees of the State are involved in the present decision. I understand the question will be again brought before the Supreme Court of the United States, and my principal object in writing you is that this State may not lose her equitable claims for reclamation on the United States, in case the State suffers loss by reason of the failure of the title conveyed by this State under certificates from the United States.

Very respectfully, your obedient servant,

SAMUEL J. KIRKWOOD.

On 26th June, 1862, the said Commissioner of the Land Office wrote to the governor of the State of Iowa, as follows:

GENERAL LAND OFFICE, *June* 26, 1862.

SIR: The attention of this office has been called to the condition of the lands in the region of the Des Moines River, above the mouth of the Raccoon Fork, which were claimed by the State of Iowa, under the act of 8th August, 1846, for the improvement of said river.

294 1st. The act of 1846, by the decision of the Supreme Court of the United States, at its December term, 1859, is restricted to the lands lying below the mouth of the Raccoon Fork, and the claim of the State to all lands above that point is abnegated.

2nd. Under said decision of the Supreme Court the Secretary of the Interior has held that the alternate, odd-numbered sections falling within the six and fifteen mile limits of the railroads, where they traverse the region of the Des Moines River above the mouth of the Raccoon Fork thereof, would enure to the State under the act of 15th May, 1856, to aid in the construction of said roads.

3rd. The joint resolution of Congress of the 2nd March, 1861, declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by Congress, approved August eighth, eighteen hundred and forty-six, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

To enable us properly to act in the matter, in view of the aforesaid decision and resolution, I have to request that you will furnish this office with a list of the tracts of land therein referred to, "held by bona-fide purchasers of the State of Iowa," on the 2nd March, 1861, certified under official seal, specifying in each case the date of sale, name of purchaser, consideration, and date of patent or deed of conveyance by the State, with all the essential particulars connected with the transaction.

This information is requested at your earliest convenience.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

To his excellency, GOVERNOR OF IOWA,
Des Moines, Iowa.

On the 25th September, 1862, the Commissioner of the General Land

Office, addressed to governor of Iowa, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *September* 25, 1862.

To his excellency the Governor of Iowa:

SIR: I respectfully call your attention to my letter of the 26th June, last, requesting you to furnish this office, at your earliest convenience, with a list of the tracts of land sold by the State of Iowa, under the act of Congress approved August 8, 1846, above the mouth of the Raccoon Forks of the Des Moines River, and now held by bona-fide purchasers, and request compliance therewith as early as practicable.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

In response to the foregoing letters of the Commissioner, the governor of Iowa, on the 20th of November, 1862, caused to be forwarded to the General Land Office a list, certified by the said governor and by the land commissioner of said State, under the official seal, of all the lands situated above the Raccoon Fork of the Des Moines River which had been certified and approved to the State under said act of August 295 8th, 1846, and also setting forth that all of said land had been sold and conveyed by said State, by deed or patent, prior to said 2d March, 1861, as follws:

List of Des Moines River lands, above the mouth of the Raccoon Forks, sold by the State of Iowa.

Then follows list of about 697 individual sales, as follows:

Dates of patents.	No. of patents.
Feb'y 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
Sept. 1, "	13
Oct. 1, "	1
March 14, 1859	5
April 9, "	3
April 20, "	2
May 23, "	18
May 31, "	44
July 12, "	1
Feb'y 25, 1860	1
	697

Example.						Date.
W. ¼ of N. W. ¼ of N. E. ¼ of N. W. ¼	S. 19	T. 78	R. 24	Ac. 122.83 at $1 25		March 25, 1852. Phineas S. Cassidy. Patented Feb'y 16, 1853. No. 2,855.]

Immediately follows certified copies of joint resolution of the general assembly, approved March 22, 1858, and resolutions of acceptance of Des Moines Navigation and Railroad Company of 15th April, 1858,

signed by R. S. Burrows, president Des Moines Navigation and Railroad Company. Certified as a true copy by Elijah Sells, secretary of state, and above set forth.

Then follows list of lands.

Parts of sec.	Sec.	T.	R.	Acres.	Date of sale.	To whom sold and patented.	Date of patent.	No. of patent.
					May 14, 1855.	Des Moines N. & R. R. Co.	May 3, '58	9
					Do	do	do	10
					Do	do	do	11
					May 6, 1856.	do	do	9
					Do	do	do	11
					Do	do	do	12
					Do	do	do	13
					Do	do	do	112
					Do	do	do	13
					Do	do	do	14
					No date	do	do	14
					May 14, 1856.	do	do	9
					May 6, 1855.	do	do	9

(Here follows copy of the general deed from the State of Iowa to the Des Moines Navigation and Railroad Company, dated May 18th, 1858, above set forth.)

296 The said list embraced all the lands situated above Raccoon Forks, mentioned in the patents from the State to said company, including those in question in this suit; and from said list it appears that all the sales to the Des Moines Navigation and Railroad Company were made prior to the date of the railroad grant of May 15, 1856. This list, as appears by endorsement thereon, was received and filed at the General Land Office, December 1, 1862.

Annexed and appended to said list are the following certificates of A. B. Miller, register of the State land office, and Samuel J. Kirkwood, governor of Iowa:

Copy of the final certificates.

STATE LAND OFFICE, IOWA,
Des Moines, July 22, 1862.

I, A. B. Miller, register of the State land office for the State of Iowa, do hereby certify that the within and foregoing lists are true and exemplifications of the sales and records of patents made out for the "Des Moines River grant," in land certified to the State of Iowa, under the act of August 8th, 1846, for the "improvement of the navigation of the Des Moines River," as shown by the records and plats now on file in this office, giving description of the lands sold, the amount paid therefor, "date of sale," "name of purchaser," to whom patented, date and number of patent—except a part of that sold to the Des Moines Navigation and Railroad Company, the date of which sale is not in this office; but the dates of the patents are shown—and the consideration of this latter class of lands was work upon the improvement of the Des Moines River, upon which the navigation company took lands at $1 25 per acre. These lists include all land heretofore certified to the State, under the act of 1846, above the mouth of the Raccoon Forks, and includes a copy of a deed made out to the "Des Moines Navigation and Railroad Company," for all these lands to which the State of Iowa had any title.

In testimony whereof I have hereto set my hand the date above written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE, IOWA,
Des Moines, July 22, 1862.

I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the above-named A. B. Miller was duly elected and qualified register of the State land office; that he is, by the laws of the State of Iowa, the custodian of all books and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is entitled to full faith and credit, and that the above is his genuine signature.

In testimony, I have hereunto set my hand and caused the great seal of the State of Iowa to be hereto affixed, the date above written.

[L. S.] SAMUEL J. KIRKWOOD.

By the governor:

ELIJAH SELLS,
Secretary of State.

On the 12th July, 1862, the Congress of the United States passed an act, of which the following is a copy:

297 CHAPTER CLXI.

An act confirming a land claim in the State of Iowa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Forks and the northern boundary of said State; such lands are to be held and applied in accordance with provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22, 1858; and if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March 2, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: *Provided*, That if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid.

Approved July 12, 1862.

That, on the 23d of February, 1863, the Commissioner of the General Land Office addressed to Secretary of the Interior an official communication, of which the following is a copy:

GENERAL LAND OFFICE, *February 23d*, 1863.

SIR: Herewith I have the honor to lay before you a map exhibiting that portion of the route of the Des Moines improvement interest as

claimed north of the Raccoon, under the original grant by act of 8th August, 1846, vol. 9, page 78, and also the lines of three railroads which traverse the same from east to west, in virtue of the railroad grant to that State by act of 15th May, 1856, vol. II, page 9, and in reference to the matter respectfully submit the following:

1st. Under a construction given to the said Des Moines grant of 8th August, 1846, there was certified conditionally, by your predecessors, tracts above the Raccoon Forks, amounting, in aggregate, to acres 271,572.24

But in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard, the Supreme Court settled the principle whereby the Des Moines improvement claim above the Raccoon Forks, under said act of 8th August, 1846, was set aside and rejected.

2d. The State of Iowa thereupon came forward, under the railroad grant by act of 15th May, 1856, vol. II, page 9, and selects, of the same lands mentioned under the first head, the quantity of acres 202,509.44

Leaving an area of acres 69,062.80
of said Des Moines selections not interfered with by railroads.

298 The railroad selections thus made and entered in lists Nos 33 to 42 inclusive, herewith, embrace "sections in place," and "indemnity" selection for the "Dubuque and Sioux City," the "Iowa Central Air Line," the "Mississippi and Missouri Railroads," according to Schedule B herewith.

The conflict of these railroad selections with the Des Moines was presented to your predecessor in report dated March 18, 1862, (Statutes, 1860–'1, page 251,) which declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress, approved August eight, eighteen hundred and forty-six, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

Secretary Smith, upon said report, ruled, under date 10th April, 1862, that "such of the lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th August, 1846," and further directed that, "after carefully satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of Raccoon Forks as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to bona-fide purchasers prior to 2d March, 1861, will be also certified to the State of Iowa."

Now, in regard to this latter part of Secretary's Smith's ruling, it is proper here to invite attention to the fact that the sales thus alluded to by him, and referred to the joint resolution of 2d March, 1861, as made by the State of Iowa to certain purchasers under the transcripts certified under said erroneous construction of the act of 8th August, 1846, for lands above the Raccoon Forks, are reported as embracing all the

lands thus "improperly" certified for the Des Moines improvement above the said Raccoon Forks.

In this connection it will be observed that, in the act of 12th July, 1862, (Statutes, page 543,) extending the Des Moines improvement to the northern boundary of Iowa, and providing for indemnity to that improvement interest where the land had been sold by the United States, there is an exception made as to those released to the vendees of Iowa by said joint resolution, coupled with an express stipulation to this effect, "that if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant," (by act of 12th July, 1862,) "the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to, and be held as a trust fund for the benefit of, the person or persons, respectively, whose titles shall have failed as aforesaid."

Now, in submitting these railroad lists for your consideration, in view of the application for your approval thereof, the question arises whether, under said ruling of your predecessor, these lists shall be approved to the State of Iowa as railroad lands, without reference to said sales, for which the said act 12th July 1862, provides an indemnity fund where they prove invalid, or shall terms of saving and exception, in respect to said sales, be inserted in said transcripts.

Should it be determined by you that such terms are not required, in view of the indemnity stipulation above mentioned, the lists, as
299 they now stand, are before you for approval; but if otherwise, it is respectfully suggested that you direct the insertion of such terms, before approval, as the nature of the case, in your judgment, may require.

3d. There is another important matter to be considered in the premises, and that is the force and effect of the said act of 12th July, 1862, in so far as the legal requirement is concerned, commanding the Department to grant indemnity to that improvement for lands sold or disposed of by the United States prior to the passage of said act, the Iowa sales excepted. The mode of dealing with this matter is presented in the report from this office, dated October 27, 1862, as approved by Secretary Smith, November 3, 1862, and the principles laid down in that report and ruling will consequently govern this office in the adjustment of the extension interest by said act of 12th July, 1862, unless otherwise directed by you.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

Hon. J. P. USHER,
Secretary of the Interior.

That, on the 7th of April, 1863, W. T. Otto, Assistant Secretary of the Interior, addressed to the Commissioner of the General Land Office an official letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
April 7th, 1863.

SIR: Your report of the 23d February last, in regard to the proper measures for carrying into effect the act of Congress, approved July 12th, 1862, by which the grant for the improvement of the Des Moines River was extended, has been carefully considered in connection with your report of the 27th October last, upon the same subject.

The Secretary instructs me to state that, after mature deliberation and examination of the additional exhibits, filed since your report was received, he concurs in the views you have expressed. He has accordingly approved the lists of lands enuring to the State of Iowa under the act of Congress of 15th May, 1866, which accompanied your report, and the same are now reported to your office that the same usual transcripts may be furnished to the governor.

The argument of Mr. Mason, and the communication of Mr. Steiger, and its enclosures, which have been received here whilst the matter has been pending, are also herewith transmitted.

I am, sir, very respectfully, your obedient servant,

W. T. OTIS,
Assistant Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

The following is a list of townships along the Des Moines River, in Northern Iowa, within the limits of the Des Moines River grant, in which even-numbered sections, by their specific numbers, (as 2, 4, 6, 8, 10, &c.,) were proclaimed for sale May 30, 1859, (proclamation No. 640,) and odd numbered sections, by their numbers, (as 1, 3, 5, 7, 9, &c.,) were proclaimed August 14, 1860, (proclamation No. 665.)

In range 27 west, townships 93, 95, 96, 97, and 98.

In range 28 west, townships 93, 94, 95, 96, 97, 98, and 99.

In range 29 west, townships 93, 94, 95, 96, 97, 98, and 99.

300 In range 30 west, townships 93, 94, 95, 96, 97, 98, 99, an d 100.

In range 31 west, townshipss 93, 94, 95, 96, 97, 98, 99, and 100.

In range 32 west, townships 93, 94, 95, 96, 97, 98, 99, and 100.

In range 33 west, townships 94, 96, 97, 98, 99 and 100.

In range 34 west, townships 95, 96, 97, 99, and 100.

In addition to these, there were a few other entire townships included in each of the two proclamations.

These townships all lie north of the lands certified to the State under the act of August 8, 1846, and include none of the lands conveyed by the State to the Des Moines Navigation and Railroad Company.

The following is a section of the statute of the State of Iowa, which has been in force since 1851:

"Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee."

(Code 1851, section 1202. Revision 1860, section 2210.)

On the 31st December, 1868, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec., 31, 1868.

SIR: I return the papers which accompany your letter of the 25th May last, in the case of Elisha Spicklemier, claiming, under the pre'mption law, the N. W. q'r sec. 15, t'p 84, range 27, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress approved Au-

gust 8, 1846, and was then "held by bona-fide purchasers under the State of Iowa," and the title of the United States was by said resolution relinquished to said State.

Your decision in favor of Spicklemier is, therefore, reversed.

Very respectfully, your obedient servant.

O. H. BROWNING,
Secretary.

COMMISSIONER OF THE GENERAL LAND OFFICE.

On the 31st December, 1868, Hon. O. H. Browning, Secretary of the Interior, on appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 31, 1868.

SIR: I have received your letter of the 12th June last, submitting the papers in the case of David C. Martz, involving the right to the W. h'f N. E. q'r 17, 80, 24, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress approved August 8th, 1846," and was "then held by bona-fide purchasers
301 under the State of Iowa," and the title of the United States was by said resolution relinquished to said State.

Your decision adverse to Marty is affirmed, and the papers are herewith returned.

Very respectfully, your obedient servant.

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner of the General Land Office.

On the 27th February, 1869, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 27, 1869.

SIR: I return the papers received with your letter of the 7th August last, in the case of Ezra H. Bennett, involving the right of the S. W. of S. E. q'r of sec. 1, t'p 82, range 26, Des Moines, Iowa.

This tract having been sold by the State of Iowa prior to the passage of the joint resolution of March 2d, 1861, the title of the United States was by said resolution relinquished to said State, and your decision adverse to the pre-emption of said Bennett is affirmed.

Very respectfully, your obedient servant.

O. H. BROWNING,
Secretary.

COMMISSIONER OF THE GENERAL LAND OFFICE.

Cash, 21,200.

On the 27th February, 1869, Hon. O. H. Browning, Secretary of the Interior, on an appeal from the Commissioner of the General Land Office, made and rendered a decision, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 27, 1869.

SIR: I have received your letter of the 22d December last, submitting the papers in the case of Levi Hull, involving the right to the S. E. q'r, N. E. q'r, lot 1, sec. 17, 83, 26, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress, approved August 8th, 1846," and was then held by a bona-fide purchaser under the State of Iowa, and the title of the United States was by said resolution relinquished to said State. Your decision in favor of the pre-emption of said Hull is, therefore, reversed. This decision will be made applicable to all similar cases. I return the papers herewith.

Very respectfully, your obedient servant.

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner General Land Office.

302 U. S. circuit court, district of Iowa.

WILLIAM BAKER, PL'FF,
v.
JESSE WILLIAMS, DEF'T. } Original bill in equity.

JESSE WILLIAMS, PL'FF,
v.
WILLIAM BAKER, DEF'T. } Cross-bill in equity.

It is stipulated and agreed by the respective parties to above actions that, on the trial thereof, the foregoing and annexed printed statement, as changed and corrected, may be read in evidence, and that the said statement and the allegations and averments contained and appearing therein for the purposes of above action, and the trial thereof, are admitted, and shall be taken, deemed, treated, and regarded as true, and as fully and legally proved, and that said statement, as changed and corrected, may be read in evidence by the said William Baker, on trial of above actions, without any other or further proof than this stipulation, with the same effect as though the said statement and the several averments and allegations therein contained and appearing, were in all respects proved and established by competent evidence.

And it is also stipulated and agreed that the copies set out and appearing in said "statement," and purporting to be copies of original letters, statutes, resolutions, deeds, contracts, papers, and other documents, are true copies of the original, of which they respectively purport to be copies, and that all such copies as set forth and appearing in said statement may be read in evidence by and in behalf of the above-named William Baker, on the trial and hearing of the above actions, without any other or further proof than this stipulation, with the same effect as though they were the original instruments duly and legally proved, by authentication or otherwise, subject, however, to the same objections as might be taken and urged to the original instruments themselves for immateriality or irrelevancy—it being the intent of this stipulation, so far as relates to the said instrument, to waive the production of the originals, and to waive and dispense with the proving

thereof, and allow the said copies to be read and used in place of the originals, subject to the objections for immateriality and irrelevancy aforesaid.

Aug. 11, 1870.

FINCH & RIVERS,
Sol. for Baker.
ISAAC COOK,
Sol. for Williams.

(Endorsed:) Baker vs. Williams. Statement of evidence and stipulation. Read in hearing, and filed Oct. 19th, 1870. George B. Corkhill, clerk.

{ THE GREAT SEAL OF THE STATE OF IOWA. } STATE OF IOWA, OFFICE REGISTER OF THE STATE LAND OFFICE, *Des Moines, April 25th*, 1870.

I, C. C. Carpenter, register of the State land office of the State of Iowa, hereby certify that the lists annexed hereto are true and correct copies from the original lists on file in my office.

303 { SEAL OF THE STATE LAND OFFICE OF IOWA. } In testimony whereof I have hereunto set my hand and affixed my official seal, date above written.

C. C. CARPENTER,
Register.

GENERAL LAND OFFICE,
January 6th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of tracts falling to the State of Iowa, under act of 8th August, 1846, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOHN WILSON,
Commissioner of the General Land Office.

A list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of 8th August, 1846, *as construed by the Secretary of the Treasury in his letter of 2d March*, 1849, *and of the Secretary of the Interior of 29th October*, 1851, *which has not heretofore been approved.*

Tracts.	S.	T.	R.	Quantities.
Section	19	89 N.	28 W.	446. 84
Lot No. 1	3	91	27	35.
Lot No. 2	"	"	"	41. 28
S. W. ¼ of N. E. ¼	"	"	"	40.
N. E. fr'l ¼ of N. W. ¼	"	"	"	41. 74
N. W. fr'l ¼ of N. W. ¼	"	"	"	41. 65
S. ½ of N. W. ¼	"	"	"	80.
S. ½	"	"	"	320.
Section	7	91	27	668. 54
W. fr'l ½ of N. W. ¼	31	"	"	97.
Sec	5	92	27	691. 80
Sec	7	"	"	658. 24
Sec	9	"	"	640.
W. ½ of N. W. ¼	15	"	"	80.
Sec	17	"	"	640.
Sec	19	"	"	665. 92
Sec	21	"	"	615. 65
Sec	29	"	"	639. 84

A list showing the vacant lands, &c.—Continued.

Tracts.	S.	T.	R.	Quantities.
Sec.	31	92	27	668. 68
Sec.	1	91	28	635. 52
Sec.	3	"	"	627. 42
Sec.	5	"	"	636. 08
Lot No. 1	7	"	"	13.
Lot No. 2	"	"	"	20.
Sec.	9	"	"	640.
Sec.	11	"	"	640.
Sec.	13	"	"	640.
Sec.	15	"	"	640.
E. ½	17	"	"	320.
E. ½ of N. W. ¼	"	"	"	80.
Lot No. 1	"	"	"	27. 40
Lot No. 2	"	"	"	39. 20
S. W. ¼	"	"	"	160
Lot No. 1	19	"	"	37. 30
Lot No. 2	"	"	"	52. 05
Lot No. 3	"	"	"	30. 60
Lot No. 4	"	"	"	68. 53
Sec.	21	"	"	640.
Sec.	23	"	"	640.
Sec.	25	"	"	640.
Sec.	27	"	"	640.
E. ½	29	"	"	320.
E. ½ of N. W. ¼	"	"	"	80.
N. E. ¼ of S. W. ¼	"	"	"	40.
Lot No. 1	29	91	28	35. 10
Lot No. 2	"	"	"	43. 55
Lot No. 3	"	"	"	36.
Lot No. 4	"	"	"	61. 60
304 Lot No. 1	31	"	"	35. 70
Sec.	33	"	"	640.
Sec.	35	"	"	640.
Sec.	1	92	"	690. 80
N. E. fr'l ¼ of N. E. ¼	3	"	"	52. 26
N. W. fr'l ¼ of N. E. ¼	"	"	"	52. 26
S. ½ of N. E. ¼	"	"	"	80.
N. E. of N. W. ¼	"	"	"	52. 26
N. W. of N. W	"	"	"	52. 26
S. E. of N. W.	"	"	"	40.
E. ½ of S. E. ¼	"	"	"	80.
N. W. ¼ of S. E. ¼	"	"	"	40.
Lot No. 1	"	"	"	33. 30
Lot No. 2	"	"	"	39. 30
Lot No. 3	"	"	"	42. 80
N. ½	11	"	"	320.
S. E ¼	"	"	"	160.
Lot No. 1	"	"	"	65. 80
Lot No. 2	"	"	"	53.
Sec	13	"	"	640.
Lot No. 1	15	"	"	15. 40
Lot No. 2	"	"	"	3. 30
Sec	23	"	"	640.
Sec.	25	"	"	640.
Lot No. 1	27	"	"	65. 20
Lot No. 2	"	"	"	51. 18
Lot No. 3	"	"	"	36.
Lot No. 4	"	"	"	62. 80
S. E. ¼ of N. E. ¼	"	"	"	40.
S. E. ¼	31	"	"	160.
Lot No. 1	"	"	"	20. 90
Lot No. 1	33	92	28	37. 70
Lot No. 2	"	"	"	36. 27
Lot No. 3	"	"	"	54. 65
Lot No. 4	"	"	"	53.
S. ½ N. E.	"	"	"	80.
S. ½		"	"	320.
Sec.	35	"	"	640.
Sec.	1	87	29	668. 16
N. E. fr'l ¼ of N. E. ¼	3	"	"	46. 90
Sec.	1	88	"	679. 73
Sec.	3	"	"	733. 18
Sec.	5	"	"	740. 10
Sec.	7	"	"	613. 28
Sec.	9	"	"	640.
Sec.	11	"	"	640.
Sec.	13	"	"	640.
Sec.	15	"	"	640.
Sec.	17	"	"	640.
Sec.	21	"	"	640.
Sec.	23	"	"	640.
Sec.	25	"	"	640.

A list showing the vacant lands, &c.—Continued.

Tracts.	S.	T.	R.	Quantities.
Sec.	27	"	"	640.
N. ½ of N. E. ¼	29	"	"	80.
Sec.	35	"	"	640.
Lot No. 1	1	89	29	15. 70
Lot No. 2	"	"	"	52. 07
Lot No. 3	"	"	"	41. 33
S. E. ¼ of S. E. ¼	"	"	"	40.
Lot No. 1	1	90	29	4. 15
Lot No. 1	13	"	"	52. 55
Lot No. 2	"	"	"	39. 80
Lot No. 3	"	"	"	48. 19
Lot No. 4	"	"	"	66. 36
S. E. ¼ of N. E. ¼	"	"	"	40.
S. E. ¼	"	"	"	160.
Lot No. 1	25	90	29	21. 68
Lot No. 2	"	"	"	52. 20
E. f'r ½ of N. E. ¼	1	88	30	106. 56
E. ½ of S. E. ¼	"	"	"	80.
				3, 460. 59

RECAPITULATION.

Amount brought from folio				1,	acres	.....	5, 803. 66
"	"	"	"	2,	"	.....	9, 614. 44
"	"	"	"	3,	"	.....	4, 644. 69
"	"	"	"	4,	"	.....	9, 619. 05
"	"	"	"	5,	"	.....	3, 460. 59
Aggregate, acres							32, 142. 43

305 DEPARTMENT OF THE INTERIOR,
December 17, 1853.

The selections embraced in the within lists are hereby approved to the State of Iowa, under act of August 5th, 1846, without prejudice to the rights, if any there be, of other parties.

R. McCLELLAND,
Secretary.

GENERAL LAND OFFICE,
January 6th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of tracts falling to the State of Iowa, under act of the 8th of August, 1846, is a true and literal exemplification from the original now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOHN WILSON,
Commissioner of the General Land Office.

A list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State under the act of September, 1841, on the 20th of July, 1850, and erroneously approved 20th February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant.

Tracts.	S.	T.	R.	Quantity.	Remarks.
W. ½ of S. W	5	87	26	80.	Embraced by list No. 49.
All	7	"	"	597. 92	" " "
N. ½	9	"	"	320.	" " "
S. ½	15	"	"	320.	" " "
All	19	"	"	609. 18	" " "
N. ½	21	"	"	320.	" " "
W. ½	23	"	"	320.	" " "
N. W. ¼	27	"	"	160.	" " "
W. ½ of N. E; E. ½ of N. W.; W. ½ of S. E., and E. ½ of S. W	29	"	"	320.	" " 51
All	31	"	"	605. 92	" " "
N. fr'l. ½ of N. W., ¼, and lots 1, 2, 3, 4	1	86	27	241. 56	" " "
S. ½	11	"	"	320.	" " "
S. W. ¼, and W. ½ of S. E. ¼	1	87	27	240.	" " 53
N. E. ¼	7	"	"	160.	" " "
N. ½	9	"	"	320.	" " "
E. ½	11	"	"	320.	" " "
All	13	"	"	640.	" " 52
				5, 894. 58	
Lots 3 and 4	15	87	27	113. 90	Embraced by list No. 52.
All	19	"	"	618. 40	" " 51
N. E ¼; N. E. ¼ of N. W. ¼; E. ½ of S. E. ¼ and lots 4, 5, 6, 7, 8	23	"	"	475. 50	" " 52
N. E. ¼; E. ½ of N. W.; N. W. of N. W.; N. ½ of S. E.; S. E. of S. E.; and lots 1, 2, 3, 4, 5	25	"	"	604. 25	" " 51 & 52
W. ½	27	"	"	320.	" " 51
All	29	"	"	640.	" " "
All	31	"	"	626. 44	" " "
E. ½	33	"	"	320.	" " "
W. ½ of N. E.; S. E. ¼, and E. ½ of N. W. ¼	31	88	27	320.	" " 53
S. E. ¼	3	87	28	160.	" " 50
N. E. ¼	11	"	"	160.	" " "
E. ½ of S. E.; N. W. of S. E., and lots 1, 2, 3	5	88	28	252. 44	" " "
W. ½, and N. E. ¼	7	"	"	468.	" " "
E. ½, and N. ½ of N. W. ¼	11	"	"	400.	" " 54
S. W. ¼	13	"	"	160.	" " "
W. ½ of S. W. ¼	17	"	"	80.	" " 56
E. ½ of N. E. ¼	19	"	"	80.	" " "
S. ½	21	"	"	320.	" " "
E. ½	25	"	"	320.	" " 53
N. ½ and S. E. ¼	33	"	"	480.	" " 50
				6, 918. 93	
Am't bro't over				5, 894. 58	
Acres				12, 813. 51	

306 DEPARTMENT OF THE INTERIOR,
December 30, 1853.

The sections embraced in the within list, are hereby approved to the State of Iowa, under act of August 8, 1846, without prejudice to the rights, if any there be, of other parties.

R. MCCLELLAND, *Secretary.*

GENERAL LAND OFFICE,
March 16, 1852.

I, Justin Butterfield, Commissioner of the General Land Office, do hereby certify that the annexed list, showing the vacant lands in the odd-numbered sections above the Raccoon Forks, within five miles of the Des Moines River, approved March 10, 1852, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

J. BUTTERFIELD,
Commissioner of the General Land Office.

A list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, as far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by he Secretary of the Treasury in his letter of 2d March, 1849, and of the Secretary of the Interior of the 29th October, 1851, not heretofore approved.

	Tracts.	S.	T.	R.	Quantities.
	S. W. of S. W. ¼	31	84	25	42.48
	All of	3	84	26	713.70
	All of	5	"	"	718.52
	All of	7	"	"	603.01
	All of	9	"	"	640.
	All of	11	"	"	640.
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	19	"	"	624.50
	All of	21	"	"	640.
	W. ½ of	23	"	"	320.
	W. ¼ and N. E. of N. E. ¼	"	"	"	120.
	W. ¼ of S. E. ¼	"	"	"	80.
	W. ½ of S. W. ¼	25	"	"	80.
	All of	27	"	"	640.
					7,142.21
	All of	29	84	26	640.
	All of	31	"	"	599.76
	All of	33	"	"	640.
	All of	35	"	"	640.
	N. W. ¼ of N. W. ¼; and S. ½ of N. W. ¼ and S. W. ¼	3	85	26	277.28
	All of	5	"	"	629.54
	All of	7	"	"	611.98
	All of	9	"	"	640.
	W. ½ S.; S. W. ¼ of N. E. ¼; W. ½ and S. E. ¼ of S. E. ¼	15	"	"	480.
	All of	17	"	"	640.
	All of	19	"	"	616.30
	All of	21	"	"	640.
	W. ½ of N. W. ¼ and S. W. ¼	23	"	"	240.
	All of	27	"	"	640.
	All of	29	"	"	640.
	All of	31	"	"	618.16
	All of	33	"	"	640.
	W. ½ of sect.; and W. ½ of N. E. ¼, and W. ½ of S. E. ¼	35	"	"	480.
	All of	3	86	26	625.92
	All of	5	"	"	624.86
	All of	7	"	"	606.82
	All of	9	"	"	640.
	W. ½; W. ½ and N. E. ¼ of N. E. ¼, and W. ½ of S. E. ¼	11	"	"	520.
	All of	15	"	"	640.
	All of	17	"	"	640.
					14,610.62
307	All of	19	86	26	607.76
	All of	21	"	"	640.
	All of	29	"	"	640.
	All of	31	"	"	607.84
	All of	33	"	"	640.
	All of, except W. ½ of S. W. ¼	5	87	26	583.98
	S. ½ of	9	"	"	320.
	N. ½ of	15	"	"	320.
	All of	17	"	"	640.
	S. ½ of	21	"	"	320.
	W. ½ of S. E. ¼	23	"	"	80.
	E. ½ and S. W. ¼	27	"	"	480.
	E. ½ of N. E. ¼; E. ½ of S. E. ¼; W. ½ of N. W., and W. ½ S. W. ¼	29	"	"	320.
	All of	33	"	"	640.
	All of	35	"	"	640.
	S. W. ¼ of S. W. ¼	29	88	26	40.
	All of	31	"	"	580.68
	All of	1	81	27	593.64
	N. E. ¼, and E. ½ of S. E. ¼	11	"	"	240.
	N. ½; S. E. ¼, and E. ½ S. W. ¼	13	"	"	560.
	E. ½ of N. E. ¼	25	"	"	80.
	All of	1	82	"	633.66
	All of	3	"	"	639.68
	N. E. ¼, and E. ½ of S. E. ¼	9	"	"	240.
	All of	11	"	"	640.
					11,727.24
	All of	13	82	27	640.
	All of	15	"	"	640.
	All of	23	"	"	640.

A list showing the vacant lands, &c —Continued.

	Tracts.	S.	T.	R.	Quantities.
	All of	25	"	"	640.
	N. E. ¼ of N. E. ¼	27	"	"	40.
	E. ½ of sec.; and E. ½ of N. W. ¼, and E. ½ of S. W. ¼	35	"	"	480.
	All of	1	83	27	481. 07
	All of	3	"	"	528. 04
	All of	5	"	"	525. 24
	All of	7	"	"	646. 08
	All of	9	"	"	640.
	All of	11	"	"	640.
	All of	13	"	"	640.
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	21	"	"	640.
	All of (Jesse Williams N. E. ¼)	23	"	"	640.
	All of	25	"	"	640.
	All of	27	"	"	640.
	E. ½ of	33	"	"	320.
	All of	35	"	"	640.
	All of	1	84	27	657. 85
	All of	3	"	"	710. 78
	All of	5	"	"	706. 24
	All of	7	"	"	643. 84
					14, 699. 14
	All of	9	84	27	640.
	All of	11	"	"	640.
	All of	13	"	"	585. 56
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	19	"	"	643. 84
	All of	21	"	"	640.
	All of	23	"	"	579. 25
	All of	25	"	"	699. 74
	All of	27	"	"	635. 53
	All of	29	"	"	640.
	All of	31	"	"	645. 20
	All of	33	"	"	640.
	All of	35	"	"	599 22
	All of	1	85	27	627. 58
	All of	3	"	"	582. 14
	All of	5	"	"	643. 58
	All of	7	"	"	638. 60
	All of	9	"	"	640.
	All of	11	"	"	590. 64
	All of	13	"	"	640.
	All of	15	"	"	605. 51
	All of	17	"	"	640.
	All of	19	"	"	644. 80
	All of	21	"	"	640.
					15, 691. 19
308	All of	23	85	27	617. 57
	All of	25	"	"	640.
	All of	27	"	"	597. 60
	All of	29	"	"	640.
	All of	31	"	"	645. 40
	All of	33	"	"	640.
	All of	35	"	"	621. 60
	N. E. ¼ of S. E. ¼; and lots 5, 6, 7, 8, and S. ½ of S. E. ¼	1	86	27	326. 39
	All of	3	"	"	574. 46
	All of	5	"	"	627. 58
	All of	7	"	"	629. 60
	All of	9	"	"	640.
	N. ½ of sec	11	"	"	320.
	All of	13	"	"	640.
	All of	15	"	"	630. 65
	All of	17	"	"	640.
	All of	19	"	"	632. 60
	All of	21	"	"	596. 88
	All of	23	"	"	640.
	All of	25	"	"	640.
	All of	27	"	"	591. 16
	All of	29	"	"	640.
	All of	31	"	"	634. 72
	All of	33	"	"	640.
	All of	35	"	"	640.
					15, 086. 21
	N. ½ of sec., and E. ½ of S. E. ¼	1	87	27	426. 44
	All of	3	"	"	673. 90

A list showing the vacant lands, &c.—Continued.

Tracts.	S.	T.	R.	Quantities.
All of	5	"	"	681. 60
W. ½ of S., and S. E. ¼	7	"	"	480.
S. ½ of	9	"	"	320.
W. ½ of	11	"	"	320.
Lots 1, 2, 5, 6, 7, 8; and E. ½ of N. E. ¼, S. W. ¼ of N. W. ¼; and W. ½ of S. W. ¼	15	"	"	472. 80
All of	17	"	"	611. 25
All of	21	"	"	587. 82
All of lots 1, 2, 3, and S. W ¼ of S. W. ¼	23	"	"	121.
E. ½ of sec	27	"	"	320.
W. ½ of sect	33	"	"	320.
All of	35	88	27	640.
S. W. ¼ of N. W. ¼, and W ½ of S. W. ¼	3	"	"	120.
All of	5	"	"	701. 30
All of	7	"	"	598. 86
All of	9	"	"	640.
W. ½ of sect.; and W. ½ of N. E. ¼, and W. ½ of S. E. ¼	15	"	"	480.
All of	17	"	"	640.
All of	19	"	"	5[illegible]9. 10
All of	21	"	"	640.
S. ½ of sect.; and S. ½ of N. E. ¼, and S. ½ of N. W. ¼	23	"	"	480.
All of	25	"	"	640.
All of	27	"	"	640.
				12, 154. 07
All of	29	88	27	640.
E. ½ of N. E. ¼; W. ½ of N. W. ¼, and S. W. ¼	31	"	"	285. 28
All of	33	"	"	640.
All of	35	"	"	640.
W. ½ of sect.; W. ½ of N. E. ¼, and S. E. ¼	19	89	27	583. 92
S. ½ of S. W. ¼	21	"	"	80.
S. ½ of N. W. ¼; S. W. ¼; & W. ½ and S. E. ½ of S. E. ¼	27	"	"	360.
All of	29	"	"	640.
All of	31	"	"	663 72
All of	33	"	"	640.
N. W. ¼ of N. W. ¼; S. ½ of N. W. ¼; S. W. ¼ and W. ½ of S. E. ¼	35	"	"	360.
E. ½ of sect.; N. fr'l ¼ N. W. ¼, and N. E. ¼ of S. W. ¼	1	83	28	352. 25
All of	1	84	28	696. 26
E. ½ of N. E. ¼	11	"	"	80.
E. ½ of sect.; and E. ½ N. W. ¼, and E. ½ of S. W. ¼	13	"	"	480.
All of	25	"	"	640.
All of	1	85	"	645. 60
E. ½ of sect	11	"	"	320.
All of	13	"	"	640.
E. ½ of N. E. ¼; E. ½ and S. W. ¼ of S. E. ¼	23	"	"	200.
All of	25	"	"	640.
E. ½ of sect	35	"	"	320.
All of	1	86	28	627. 88
				11, 174. 91
N. ½ of sect.; S. E. ¼, and N. E. ¼ of S. W. ¼	3	86	28	503. 02
All of	11	"	"	640.
All of	13	"	"	640.
E. ½ of N. E. ¼, and E. ½ of S. E. ¼	15	"	"	160.
All of	23	"	"	640.
All of	25	"	"	640.
309 E. ½ of N. E. ¼, and E. ½ of S. E. ¼	27	"	"	160.
All of	35	"	"	640.
All of	1	87	28	622. 58
N. ½ and S. W. ¼	3	"	"	518. 28
All of	5	"	"	673. 98
All of	7	"	"	621. 98
All of	9	"	"	640.
W. ½ and S. E. ¼	11	"	"	480.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	640.
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
N. ½ of N. E. ¼; S E. ¼ of N. E. ¼, and N. E. ¼ of S. E. ¼	29	"	"	160.
N E. ¼; N. E. ¼ of N. W. ¼, N. ½ and S. E. ¼ of S. E. ¼	33	"	"	320.
All of	35	"	"	640.
All of	1	88	28	709. 10
All of	3	"	"	719. 64
				14, 608. 58
N. ½ of sec. and lot 4	5	88	28	439. 87
S. E. ¼	7	"	"	160.

A list showing the vacant lands, &c.—Continued.

Tracts.	S.	T.	R.	Quantities.
All of	9	"	"	640.
S. W. ¼ and S. ½ of N. W. ¼	11	"	"	240.
N. ½ and S. E. ¼	13	"	"	480.
All of	15	"	"	599. 68
N. ½ S. E. ¼; and E. ½, of S. W. ¼	17	"	"	510. 55
W. ½ S. E. ¼; and W. ½ of N. E. ¼	19	"	"	541. 5$
N. ½ of sec	21	"	"	320.
All of	23	"	"	606. 68
W. ½ of sec	25	"	"	320.
All of	27	"	"	619. 88
All of	29	"	"	640.
All of	31	"	"	619. 08
S. W. ¼	33	"	"	160.
All of	35	"	"	593. 25
W. ½ sect.; S. W. ¼ of N. E. ¼ and W. ½ of S. E. ¼	1	89	28	414. 03
All of	3	"	"	589. 02
All of	5	"	"	606. 16
All of fr'c't'l	7	"	"	312. 99
All of	9	"	"	640.
All of	11	"	"	640.
W. ½ of sect.; W. ½ of N. E. ¼; W. ½ and S. E. ¼ of S. E. ¼	13	"	"	520.
All of	15	"	"	640.
All of	17	"	"	640.
				12,492. 77
All of	21	89	28	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of fract'l	29	"	"	558. 21
All of fract'l	31	"	"	1. 41
All of	33	"	"	640.
All of	35	"	"	640.
W. ½ of sect.; W. ½ of N. E. ¼, and W. ½ of S. E. ¼	1	90	28	469. 75
All of	3	"	"	642. 18
All of	5	"	"	638. 94
All of	7	"	"	640. 54
All of	9	"	"	640.
All of	11	"	"	640.
W. ¼ of N. W. ¼	13	"	"	80.
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	640. 13
All of	21	"	"	640.
All of	23	"	"	640.
S. W. ¼ of N. W. ¼, and W. ½ of S. W. ¼	25	"	"	120.
All of	27	"	"	640.
All of	29	"	"	640.
All of fract'l	31	"	"	490. 27
All of	33	"	"	640.
				13,881 43
All of	35	90	28	640.

310

RECAPITULATION.

Amount from fol. column,	1	7,142. 21
" " "	2	14,610. 62
" " "	3	11,727. 24
" " "	4	14,699. 14
" " "	5	15,691. 19
" " "	6	15,086. 21
" " "	7	12,154. 07
" " "	8	11,174. 91
" " "	9	14,608. 58
" " "	10	12,492. 77
" " "	11	13,881. 43
" " "	12	640.
Acres		143,908. 37

DEPARTMENT OF THE INTERIOR,
Washington, March 10, 1852.

The selections embraced in the within list are hereby approved, in accordance with the views expressed in my letter of the 29th October last, to the Commissioners of the General Land Office, subject to any right which may have existed at the time the selections were made, known to the land officers by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Forks.

ALEX. H. H. STUART, *Secretary.*

GENERAL LAND OFFICE, *October* 31*st*, 1851.

I, Justin Butterfield, Commissioner of the General Land Office, do hereby certify that the annexed copies of lists marked 1, 2, and 3, and the approval of the Secretary of the Interior, are true and literal exemplifications from the records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

J. BUTTERFIELD,
Commissioner of the General Land Office.

EXPLANATIONS.

List No. 1 shows the odd-numbered sections and parts of sections within the limits of the Des Moines River grant above the Raccoon Forks, in the townships embraced in said list.

List No. 2 shows the tracts sold within the above-mentioned sections and parts of sections, between the 24th August, 1848, and the 16th June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon Fork.

List No. 3 shows the residuary or vacant tracts after deducting from list No. 1 the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant, not interfered with by previous sales.

311 LIST NO. 1 —*Showing the tracts falling within the limits of the Des Moines grant above the Raccoon Forks of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that said grant extended to the north boundary of the State.*

Part of section.	S.	T.	R.	Quantity.
S. W. of S. W	5	79	23 W.	40.
All of	7	"	"	669. 44
N. ½; N. ½ S. E., and N. ½ of S. W	17	"	"	480.
N. W. of N. E., and N. ½ of N. W	21	"	"	120.
W. ½ of N. W.; W. ½ S. W. ¼, and S. E. of S. W	31	80	"	232.
N. E. N. W.; N. W. S. W., and lots 1, 2, 3, and 4	3	78	24 W.	223. 38
All of	5	"	"	700. 74
All of	7	"	"	652. 18
Lots No. 1, 2, 3, 4, 5, 6, 7, N. W. N. E., and N. W	9	"	"	494. 83
All of	17	"	"	636. 47
All of	19	"	"	653. 12
N. W. of N. W	21	"	"	40.
N. W. of N. E.; N. W. ¼; N. E. S. W., and W. ½ S. W	29	"	"	320.
N. E. ¼; E. ½ N. W.; N. W. ¼ N. W., and N. ½ S. E. ¼	31	"	"	363. 08
All of	1	79	24 W.	668. 62

LIST No. 1—Continued.

Part of section.	S.	T.	R.	Quantity.
All of	3	"	"	673.52
All of	5	"	"	620.79
All of	7	"	"	643.42
All of	9	"	"	640.
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	594.20
All of	19	"	"	646.74
All of	21	"	"	567.35
All of	23	"	"	640.
N. W. ¼, W. ½ S. W	25	"	"	240.
All of	27	"	"	606.10
Forward				14,085.98

Part of section.	S.	T.	R.	Quantity.
Amount bro't up				14,085.98
All of	29	79	24 W.	640.
All of	31	"	"	661.28
All of	33	"	"	640.
E. ½ N. E.; N. W. ¼ N. E., and lots 1, 2, 3, 4, 5, 6, 7, and 8	35	"	"	512.05
All of	3	80	"	708.23
All of	5	"	"	709.84
All of	7	"	"	665.18
All of	9	"	"	640.
All of	11	"	"	640.
S. W. N. E.; N. W., S. W., and W. ½ S. E	13	"	"	440.
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	628.61
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	615.55
All of	31	"	"	604.26
All of	33	"	"	640.
All of	35	"	"	640.
W. ½ S. W. ¼, and S. E. of S. W	7	81	"	127.32
All of	19	"	"	642.08
S. W. S. W	21	"	"	40.
W. ½ S. W	27	"	"	80.
All of	29	"	"	640.
All of	31	"	"	635.88
All of	33	"	"	643.
All of	1	78	25 W.	698.16
E. ½; N. W. ¼, and E. ½ of S. W	3	"	"	617.12
All of	11	"	"	640.
All of	13	"	"	598.70
N. E., and E. ½ of S. E	23	"	"	240.
Amount forward				32,910.58

312 Part of section.	S.	T.	R.	Quantity.
Amount brought forward				32,910.58
N. E. ¼; E. ½ N. W.; N. W. N. W.; E. ½ S. E.; N. W. S. E., and N. E. of S. W	25	78	25 W.	440.
All of	1	79	25 "	684.80
All of	3	"	"	681.70
N. ½ of N. E	5	"	"	99.91
E. ½; E. ½ N. W.; N. W. N. W., and E. ½ of S. W	9	"	"	520.
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	640.
E. ½ of N. E., and E. ½ S. E	21	"	"	160.
All of	23	"	"	640.
All of	25	"	"	640.
E. ½; N. W. ¼; E. ½ of S. W., and N. W. S. W	27	"	"	600.
All of	35	"	"	640.
All of	1	80	"	707.56
All of	3	"	"	664.36

LIST NO. 1—*Continued.*

Part of section.	S.	T.	R.	Quantity.
All of	5	"	"	689.74
All of	7	"	"	652.
All of	9	"	"	640.
All of	11	"	"	599.63
All of	13	"	"	596.83
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	653.04
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	640.
N. E. ¼ E. ½ N. W., and N. E. of S. E.	31	"	"	280.
All of	33	"	"	640.
All of	35	"	"	640.
All of	3	81	25 W.	616.55
All of	5	"	"	617.84
All of	7	"	"	674.16
All of	9	"	"	640.
				53,728.36

Part of section.	S.	T.	R.	Quantity.
Amount brought up				53,728.36
All of	11	81	25 W.	640.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	676.38
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	600.76
All of	31	"	"	675.62
All of	33	"	"	561.25
All of	35	"	"	640.
All of	5	82	25 W.	635.18
All of	7	"	"	658.86
W. ½ N. W.; W. ½ of S. W., and S. E. of S. W.	9	"	"	200.
All of	17	"	"	640.
All of	19	"	"	663.92
W. ½ N. E.; S. E. N. E.; and W. ½, and S. E. ¼	21	"	"	600.
W. ½ N. W., and W. ½ S. W. ¼	27	"	"	160.
All of	29	"	"	640.
All of	31	"	"	663.10
All of	33	"	"	640.
W. ½ of N. E.; W. ½, and W. ½ of S. E.	7	83	"	467.98
All of	19	"	"	653.08
W. ½ of N. W. ¼, and S. W. ¼	29	"	"	240.
All of	31	"	"	665.52
All of	1	80	26 W.	698.18
All of	3	"	"	701.92
E. ½; N. W. ¼, and N. E. of S. W.	5	"	"	578.78
E. ½; N. W. ¼, and E. ½ of S. W.	9	"	"	560.
All of	11	"	"	640.
All of	13	"	"	640.
N. ½, and N. ½ of S. E.	15	"	"	400.
N. E. of N. E.	23	"	"	40.
N. E.; N. E. of N. W., and E. ½ S. E. ¼	25	"	"	280.
				74,068.89

313 Part of section.	S.	T.	R.	Quantity.
Amount brought up				74,068.89
All of	1	81	26 W.	609.38
All of	3	"	"	580.56
All of	5	"	"	595.26
All of	7	"	"	612.08
All of	9	"	"	640.

LIST NO. 1—*Continued.*

Part of section.	S.	T.	R.	Quantity.
All of	11	"	"	598. 73
All of	13	"	"	631. 42
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	612.
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	625. 42
All of	27	"	"	640.
All of	29	"	"	640.
N. E. N. E.; N. W.; E. ½ S. E.; N. W. S. E	31	"	"	320.
All of	33	"	"	640.
All of	35	"	"	640.
All of	1	82	"	637. 84
All of	3	"	"	648.
All of	5	"	"	589. 23
All of	7	"	"	608.
All of	9	"	"	598. 46
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	597. 58
All of	17	"	"	640.
All of	19	"	"	613. 24
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	590. 91
All of	29	"	"	640.
All of	31	"	"	621. 60
All of	33	"	"	640.
All of	35	"	"	640.
All of	1	83	"	521. 60
All of	3	"	"	525. 98
All of	5	"	"	532.
				97, 858. 18

Part of section.	S.	T.	R.	Quantity.
Amount brought up				97, 858. 18
All of	7	83	26 W.	587. 72
All of	9	"	"	640.
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	594. 30
All of	19	"	"	616. 98
All of	21	"	"	631. 32
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	592. 36
All of	31	"	"	620.
All of	33	"	"	574. 92
All of	35	"	"	640.
Total				107, 195. 78

GENERAL LAND OFFICE, *December* 26, 1849.

Commissioner.

314 LIST NO. 2.—*Showing the tracts which have been disposed of subsequently to the 24th of August, 1848, (being the date of the receipt by the land officers of the letter of 7th August, 1848, indicating that the grant extended only to the Raccoon Forks of the Des Moines River,) and previous to the 16th June, 1849, the date of their reception of the letter from this office of 1st June, 1849, communicating the Secretary's decision that said grant extended beyond said point, and to the north boundary of the State.*

Part of section.	S.	T.	R.	Quantity.	No. of cert. or bounty-land warrant.	Date of entry or location.	Remarks.
N. E. of S. E., E. ½ of N. E., and N. W. of N. E.	17	79	23 W.	160.	W't 7, 776	Jan. 23, 1849	
N. E. of N. W.	3	78	24 W.	58. 99	Cert. 1, 667	Oct. 30, 1848	
N. W. of S. W., and lot No. 4	"	"	"	77. 65	" 1, 667	" " "	
Lots No. 1, 2, and 3	"	"	"	86. 74	" 1, 604	" 16, "	
E. ½ of N. E. fr'l ¼	5	"	"	95. 37	" 1, 605	" " "	
W. ½ of N. E., and E. ½ of N. W. fr'l ¼	"	"	"	190. 37	W't 9, 352	" 30, "	
W. ½ of N. W. fr'l	"	"	"	95.	Cert. 1, 606	" 16, "	
S. W. ¼	"	"	"	160.	W't 18, 752	" 30, "	
S. E. ¼	"	"	"	160.	" 17, 644	" " "	
N. E. ¼	7	"	"	160.	" 3, 182	" " "	
E. ½ of N. W. ¼	"	"	"	80.	Cert. 1, 827	Dec. 16, "	
W. ½ of N. W. fr'l ¼; N. W. of S. W., and N. E. of S. W.	"	"	"	170. 89	W't 29, 348	Feb. 1, 1849	
S. E. of S. W.	"	"	"	40.	C. 1, 668	Oct. 30, 1848	
S. E. fr'l ¼	"	"	"	158. 28	W. 6, 064	" " "	
S. W. fr'l ¼ of S. W. ¼	"	"	"	43. 01	Decl't'y statement filed March 28, 1849.		
Lot No. 1, and N. W. of N. E.	9	"	"	75. 50	C. 1, 192½	May 12, 1848	
Lots No. 2 and 3	"	"	"	83. 68	" 1, 608	Oct. 16, 1848	
Lot No. 4	"	"	"	52. 85	" 1, 830	Dec. 18, "	
N. W. ¼	9	"	"	160.	W't 26, 663	Oct. 30, "	
Lot No. 5	"	"	"	40. 10	C. 2, 027	May 3, 1849	
Lot No. 7	"	"	"	38. 95	W't 1, 327	Dec. 4, 1848	
N. E. ¼	17	"	"	160.	" 22, 655	" 6 "	
N. E. of N. W.; S. W. of N. W. and lot No. 2	"	"	"	116.	" 20, 835	Nov. 18 "	
S. E. of N. W.	"	"	"	40.	Decl. statement filed May 3d, 1849.		
S. ½ of N. W. and N. ½ of S. W. ¼	1	79	"	160.	W't 13, 050	June 12, 1849	
N. E. fr'l ¼	3	"	"	176. 73	" 20, 352	Oct. 30, 1848	
N. W. of N. W. fr'l ¼	"	"	"	48. 40	" 22, 265	" " "	
N. ½ of S. W. and N. ½ of S. E.	"	"	"	160.	" 18, 984	" " "	
S. ½ of S. W. and S. ½ of S. E.	"	"	"	160.	" 15, 434	" " "	
E. ½ of N. W. ¼	"	"	"	88. 39	" 47, 879	May 18, 1849	
Lot No. 3, and E. ½ of N. E. fr'l ¼	5	"	"	143. 61	" 14, 735	Oct. 30, 1848	
N. W. of N. E. fr'l ¼, and N. E. of N. W	"	"	"	95. 05	" 13, 224	" " "	
Lot No. 4	"	"	"	35. 88	" 57, 240	June 11, 1849	
Forward	----	----	------	3, 571. 44			

Part of section.	Sec.	T.	R.	Quantity.	No. of certif. & B. L. warrant.	Date of entry or location.
Amount bro't over	----	----	------	3, 571. 44		
Lots No. 1, 2, and E. ½ of S. E.	5	79	24 W.	157. 80	W't 57, 241	June 11, 1849
S. E. of N. E.	7	"	"	40.	" 32, 818	March 12, "
N. ½ of S. E.	"	"	"	80.	" 33, 462	June 4, "
N. E. ¼	9	"	"	160.	" 30, 128	Oct. 30, 1848
N. W. ¼	"	"	"	160.	" 21, 816	" " "
W. ½ of S. W. ¼	"	"	"	80.	" 3, 884	" " "
E. ½ of S. W., and W. ½ of S. E.	"	"	"	160.	" 31, 113	Feb'y 12, 1849
E. ½ of S. E	"	"	"	80.	" 20, 597	" " "
E. ½ of N. E.	11	"	"	80.	" 20, 390	Oct. 30, 1848
E. ½ of N. W.	"	"	"	80.	" 46, 651	April 16, 1849
W. ½ of N. W.	"	"	"	80.	" 12, 663	Oct. 30, 1848
N. E. of S. W.	"	"	"	40.	" 46, 651	April 16, 1849
E. ½ of S. E.	"	"	"	80.	" 43, 986	May 30, "
W. ½ of N. W.	13	"	"	80.	" 44, 121	" " "
Lot No. 4	17	"	"	54. 32	C. 1, 610	Oct. 16, 1848
Lots 5 and 6, and W. ½ of N. W.	"	"	"	171. 30	W't 26, 748	" 30, "

315 LIST NO. 2—*Continued.*

Lots 1, 2, 3, and S. E. ¼ of N. E.	"	"	"	160. 33	"	31, 366	Feb'y 12, 1849
Lot No. 2	21	"	"	50. 15	C.	1, 611	Oct. 16, 1848
Lots 4 and 5, and E. ½ of S. W. ¼	"	"	"	172. 50	W.	3, 577	" 30, "
Lots 6, 7, and 8	"	"	"	155. 85	"	24, 165	" " "
Lot No. 1	"	"	"	48. 55	C.	1, 611	" 16, "
N. ½ of N. E. and N. ½ of N. W	27	"	"	160.	W.	24, 141	" 30, "
Lots No. 2 and 3	"	"	"	110. 70	"	28, 332	" " "
" " 4 and 5	"	"	"	103. 75	C.	1, 612	" 16, "
N. ½ of S. E. ¼, and S. ½ of N. E	"	"	"	160.	W.	28, 349	" 30, "
Lot No. 1, and S. E. ¼ of S. E	"	"	"	71. 65	"	26, 659	" " "
S. ½ of N. E. and S. ½ of N. W	29	"	"	160.	"	27, 362	April 9, 1849
S. W. ¼	"	"	"	160.	"	23, 720	Oct. 30, 1848
S. E. ¼	"	"	"	160.	"	24, 213	" " "
E. ½ of N. E. ¼, and E. ½ of S. E. ¼	31	"	"	160.	"	19, 002	May 18, 1849
W. ½ of N. E., and W. ½ of S. E	"	"	"	160.	"	32, 931	June 4, "
S. W. fr'l ¼	"	"	"	171. 32	"	1, 114	April 30, "
N. ½ of N. E.	33	"	"	80.	"	26, 669	Oct. 30, 1848
N. W. ¼	"	"	"	160.	"	30, 371	Dec. 16, "
S. W. ¼	"	"	"	160.	C.	1, 613	Oct. " "
S. ½ of N. E., and N. ½ of S. E	"	"	"	160.	W.	13, 086	Nov. 4, "
S. W. ¼ of S. E	"	"	"	40.	C.	1, 958	March 20, 1849
S. E. ¼ of S. E	"	"	"	40.	W.	26, 658	Oct. 30, 1848
Lots 3, 4, and N. ½ of N. E	35	"	"	161. 60	"	27, 974	" " "
Lots No. 6, 7, and 8	"	"	"	185. 10	C.	1, 614	" 16, "
				8, 306. 36			

LIST NO. 2—*Continued.*

Part of section.	Sec.	T.	R.	Quantity.	No. of certif. & B. L. warrant.	Date of entry or location.	
Amount brought up				8, 306. 36			
Lot No. 5	35	79 N	24 W.	26. 35	W't 26, 656	Oct. 30, 1848	
Lot No. 1 and 2	"	"	"	99.	Cer. 1, 762	Nov. 18, "	
S. E. of N. E	"	"	"	40.	W't 26, 660	Oct. 30, "	
All of	5	80	"	709. 84	Univ'y app'd	Feb. 26, 1849	
N. E	7	"	"	160.	Decl. st'm't filed	May 28, "	
N. ½ of N. W. ¼	"	"	"	85. 98	School land app'd	Apr. 6, "	Act 4 Sept., '41.
S. ½ of N. W. ¼, and N. ½ of S. W. fr'l ½	"	"	"	172. 59	W. 40, 398	April 16, "	
S. E. ¼	"	"	"	160.	" 20, 899	Oct. 31, 1848	
S. W. ¼	15	"	"	160.	" 35, 806	Mar. 20, 1849	
N. W. ¼	17	"	"	160.	" 50, 206	May 20, "	
S. W. ¼	"	"	"	160.	" 33, 493	Jan. 23, "	
S. E. ¼	"	"	"	160.	" 20, 009	Apr. 16, "	
E. ½ of N. W. ¼; N. W. of N. W. ¼, and lot 3	19	"	"	157. 03	" 6, 657	Nov. 18, 1848	
N. W. of N. E	"	"	"	40.	" 8, 052	" " "	
S. W. of N. E	"	"	"	40.	C. 1, 789	" 27, "	
Lots No. 1, 2, 4, and 5	"	"	"	154. 49	W't 29, 928	May 21, 1849	
Lots No. 6 and 7, and N. ½ of S. E	"	"	"	157. 09	" 47, 877	" 18, "	
N. E. ¼	21	"	"	160.	" 24, 139	Oct. 30, 1848	
N. W	"	"	"	160.	" 14, 867	" " "	
S. W. ¼	"	"	"	160.	" 28, 478	" " "	
N. ½ of S. E	"	"	"	80.	" 29, 358	" " "	
S. ½ of S. E	"	"	"	80.	" 30, 560	" " "	
S. ½ of N. E., and N. W. of S. E	27	"	"	120.	" 38, 169	May 30, 1849	
N. ½ of S. W. and S. ½ of N. W	"	"	"	160.	" 20, 817	Oct. 30, 1848	
E. ½ of N. E	29	"	"	80.	" 11, 407	Dec. 4, "	
W. ½ of N. E. and E. ½ of N. W	"	"	"	160.	" 20, 538	Oct. 31, "	
Lots 3, 4, 5, N. E. S. W., and N. W. of S. E	"	"	"	175.	" 29, 085	M'ch 5, 1849	
Lot No. 6	"	"	"	57. 80	C. 1, 616	Oct. 16, 1848	
" " 2	"	"	"	13. 34	W. 19, 037	Dec. 4, "	
" " 1	31	"	"	34. 44	" 19, 037	" " "	
" " 7	"	"	"	42. 39	" 57, 240	June 11, 1849	
N. E. ¼	33	"	"	160.	" 26, 747	Oct. 30, 1848	
S. W. ¼	33	"	"	160.	" 30, 456	" " "	
E. ½ of S. E	"	"	"	80.	" 22, 353	" " "	
W. ½ of N. E	35	"	"	80.	" 38 167	May 30, 1849	
N. W. ¼	"	"	"	160.	" 5, 497	M'ch 20, "	
S. W. ¼	"	"	"	160.	" 37, 809	" " "	
S. E	"	"	"	160.	" 41, 652	May 3, "	
N. ½	31	81	"	318. 49	Univ'y app'd	Feb. 26, "	Act 29 J'ly, '40.
S. W. fr'l ¼	"	"	"	157. 39	W't 21, 157	Jan'y 23, "	
Forward				13, 867. 58			

STATEMENT—*Continued.*

Part of section.	S.	T.	R.	Quantity.	No. of cert. or warrants.	Date of entry, &c.	Remarks.
Brought forward				13,867.58			
316 N. E. of N. E.	1	78	25 W.	54.51	W't 35,763	Jan'y 23, 1849	
N. E. N. W.; N. W. of N. E., and S. W of N. W	11	"	"	120.	Decl. st'm't fil'd	Apr. 16, 1849	
S. W	"	"	"	160.	W't 26,183	Jan'y 23, "	
S. E	"	"	"	160.	" 22,200	April 16, "	
Lots Nos. 1 and 2	13	"	"	80.	" 4,552	Oct. 30, 1848	
Lots 3 and 4, and N. W. of N. W	"	"	"	124.30	" 4,730	Nov. 23, "	
Lot No. 5	"	"	"	42.05	" 30,488	Nov, 13, "	
S. W. of S. W	"	"	"	40.	" 33,045	" " "	
S. E. of S. W., and S. W. of S. E	"	"	"	80.	" 25,683	Dec. 4, "	
N. E	23	"	"	160.	" 46,006	April 16, 1849	
E. ½ of N. E.; S. W. of N. E., and S. E. of N. W	25	"	"	160.	" 26,469	May 16, "	
S. W	1	79	25 W.	160.	" 38,059	April 30, "	
S. E	"	"	"	160.	" 38,125	" " "	
S. ½ of N. E.; N. W. of N. E., and N. E. of N. W	13	"	"	160.	" 38,165	May 30, "	
S. ½ of N. W., and N. W. of N. W	"	"	"	120.	" 2,163	April 19, 1849	
W. ½ of S. W	"	"	"	80.	" 30,186	Nov. 27, 1848	
S. E. ¼	"	"	"	160.	" 25,713	Dec. 4, "	
N. E. of N. E	23	"	"	40.	" 30,186	Nov. 27, "	
E. ½ of N. E., and E. ½ of S. E.	*25	"	"	160.	" 3,621	Oct. 30, "	
N. E. fr. ¼ of N. E	1	80	"	56.78	" 10,268	Jan'y 23, 1849	
N. W. of N. E., and E. ½ of N. W	"	"	"	153.78	" 26,503	Mar. 20, "	
W. ½ fr. of N. W., and N. ½ of S. W	"	"	"	177.	" 30,192	Nov. 13, 1848	
S. ½ of S. W	"	"	"	80.	" 24,836	Jan'y 23, 1849	
S. E	"	"	"	160.	" 27,415	" " "	
N. fr'l ¼ of N. E., and N. E. of N. W	3	"	"	167.15	" 36,371	" " "	
N. E. of N. E	11	"	"	40.	C. 2,128	Jan'y 12, "	
W. ½ of N. E.; S. E. of N. E., and N. E. of S. E	"	"	"	160.	W't 28,871	Mar. 3, "	
N. W. ¼	"	"	"	160.	" 24,545	May 21, "	
E. ½ of N. E	13	"	"	80.	" 39,898	" 16, "	
Lots 5 and 6, and S. W. of N. E	"	"	"	110.80	" 19,728	Mar. 20, "	
Lots No', 1 and 2	"	"	"	105.85	" 15,273	" " "	
E. ½ of S. E., and N. W. of S. E	"	"	"	120.	" 45,827	April 16, "	
E. ½ of S. E., and N. W. of S. E	29	"	"	120.	" 57,244	June 11, "	
S. W. of N. W., and W. ½ of S. W. fr'l ¼	19	81	"	147.21	" 21,408	May 21, "	
N. W. ¼	21	"	"	160.	Decl. statement	filed March 21, 1849.	
S. W. ¼	"	"	"	160.	W't 24,292	Mar. 20, "	
Forward				18,247 81			

* Supposed should be "35."

STATEMENT—*Continued.*

Part of section.	S.	T.	R.	Quantity.	No. of cert. or bounty-land warrant.	Date.	Remarks.
Brought up				18,207.81			
W. ½ of N. E., and E. ½ of N. W	27	81	25 W.	160.	W't 30,139	Oct. 30, 1848	
S. W. ¼	"	"	"	160.	" 23,433	May 21, 1849	
S. E	"	"	"	160.	" 21,407	" " "	
Lot No. 2, W. ½ of S. W., and S. E. of S. W	29	"	"	162.73	" 25,731	Dec. 4, 1848	
Lot No. 1	"	"	"	39.34	C. 3,980	" 18, "	
Lots 3 and 4, and S. E. of S. E	"	"	"	130.32	W. 45,853		
Lots 1, 7, 8, 9, and 10	33	"	"	149.66	" 21,416	May 21, 1849	
317 Lots 11, 12, 13, and N. E. of S. E	"	"	"	159.70	" 25,610	" " "	
N. W. ¼	35	"	"	160.	" 29,243	June 13, "	

S. W	"	"	"	160.	" 19,025	Oct. 30, 1848	
E. ½ of N. E.	"	"	"	80.	" 38,162	May 30, 1849	
W. ½ of N. E., and W. ½ of S. E.	"	"	"	160.	114	June 13, "	
E. ½ of S. E.	"	"	"	80.	" 30,125	Oct. 30, "	
All of	19	82	"	663.92	University,	Feb'y 21, "	Act 20 J'ly, '40.
S. E. of S. E.	21	"	"	40.	W't 9,999	Dec. 18, 1848	
N. W. of N. W	27	"	"	40.	" 9,999	" " "	
N. E. fr'l ½	1	81	26 W.	144.04	" 3,923	April 16, 1849	
N. W. fr'l ½	1	"	"	145.34	" 30,477	Dec. 18, 1848	
S. W	"	"	"	160.	" 54,399	June 4, 1849	
S. ½ of S. W	3	"	"	80.	" 7,382	Nov. 13, 1848	
Lots 1, 2, and 3, and S. E. ¼ of N. W.	11	"	"	171.20	" 3,636	March 28, 1849	
S. W. of N. W.; lot 4, and N. W. of S. W.	"	"	"	125.49	" 31,115	" " "	
W. ½ of S. W., and lot No. 2	13	"	"	62.07	" 24,427	Dec. 18, 1848	
E. ½ of S. W., and W. ½ of S. E.	"	"	"	160.	" 4,139	April 30, 1849	
S. W	23	"	"	160.	" 26,632	April 16, "	
W. ½ of N. W	25	"	"	80.	" 19,227	May 3, "	
N. W. fr'l ½	1	82	"	159.88	" 26,661	Oct. 30, 1848	
S. ½ of N. E.; N. E. of S. W., and N. W. of S. E.	"	"	"	160.	" 30,484	Jan. 23, 1849	
Lots 1, 2, 3, and N. E. of S. E.	5	"	"	140.33	" 25,574	Feb. 26, "	
S. W. ¼	11	"	"	160.	" 36,711	Jan. 23, "	
S. W. ¼	23	"	"	160.	" 42,089	April 16, "	
All of	25	"	"	640.	University,	Feb. 26, "	Act 20 J'ly, '40.
Lots 8 and 9, and S. W. of S. W	27	"	"	110.55	W't 9,931	Nov. 18, 1848	
N. W	35	"	"	160.	" 32,334	May 8, 1849	
N. E.	"	"	"	160.	" 35,869	Mar. 5, "	
E. ½ of N. E. ¼	3	83	"	51.12	304	Nov. 13, 1848	
Forward				23,943.50			

STATEMENT—*Continued.*

Part of section.	Sec.	T.	R.	Quantity.	No. of certif. & B. L. warrant.	Date of entry or location.	
Brought forward				23,943.50			
S. E. ¼	3	83	26 W.	160.	W't 15,490	April 16, 1849	
N. W. fr'l ¼, and W. ½ of N. E. fr'l ¼	5	"	"	159.	" 50,617	June 11, "	
Lots 3 and 4, and E. ½ of N. E.	7	"	"	167.17	" 13,117	May 16, "	
Lots 5, 6, W. fr'l ½ of N. W. ¼, and N. W. ¼ of S. W. ¼	"	"	"	163.23	" 18,645	Feb. 26, "	
Lots 7 and 8, and S. W. of S. W.	"	"	"	93.13	" 50,597	June 11, "	
E. ½ of S. E., and lot No. 1	"	"	"	121.04	" 26,300	" 4, "	
N. ½ of S. W., and S. W. of N. W.	11	"	"	120.	" 28,350	Oct. 30, 1848	
N. E. ¼	15	"	"	160.	" 34,172	June 4, 1849	
E. ½ of S. E.	"	"	"	80.	" 29,982	Oct. 30, 1848	
E. ½ of S. W. ¼, and W. ½ of S. E.	"	"	"	160.	" 29,467	" " "	
Lot 5, and S. W. of S. W.	17	"	"	80.80	" 23,174	Feb. 1, 1849	
S. ½ of S. E.	35	"	"	80.	" 32,898	" 26, "	
Total				25,487.87			

318 LIST NO. 3.—*Showing the vacant tracts, within the odd-numbered sections, within five miles, on either side of the Des Moines River.*

Description.	S.	T.	R.	Acres.
S. W. of S. W.	5	79	23 W.	40.
All of	7	"	"	669. 44
N. W. ¼; S. W. of N. E.; N. W. of S. E., and N. ¼ of S. W	17	"	"	320.
N. W. of N. E., and N. ½ of N. W.	21	"	"	120.
W. ½ of N. W.; W. ½ of S. W. ¼, and S. E. ¼ of S. W	31	80	"	232.
Lot No. 6	9	78	24	43. 75
S. ½ and fr. on left bank	17	"	"	320. 47
All of	19	"	"	653. 12
N. W. of N. W.	21	"	"	40.
N. W. of N. E.; N. W.; N. E. of S. W., and W. ½ S. W	29	"	"	320.
N. E.; E. ½ of N. W.; N. W. of S. W., and N. ½ of S. E	31	"	"	363. 08
N. ½ of N. W.; S. ½ of S. W., and E. ½	1	79	"	508. 62
S. W. of N. W	3	"	"	40.
Lots No. 5, 6, 7, and W. ½ of S. W	5	"	"	188. 45
N. ½ of N. E., and S. W. ¼ of N. E., and S. ½ of S. E., and W. ½	7	"	"	523. 42
W. ½ of N. E.; W. ½ of S. E.; W. ½ S. W., and S. E. of S. W	11	"	"	280.
E. ½ S. W., and E ½ of N. W. ¼	13	"	"	560.
All of	15	"	"	640.
Lots No. 7, 8, and 9; W. ½ of S. W., and S. E. of S. W.	17	"	"	208. 25
All of	19	"	"	646. 74
Lot No. 3; W. ½ of S. W., and S. W. of N. W	21	"	"	140. 30
All of	23	"	"	640.
N. W.; *or* W. ½ of S. W	25	"	"	240.
N. ½ of N. E., and N. ½ of N. W	29	"	"	160.
Total of 1st column				7, 897. 64
(2d column.) N. W. fr'l ¼	31	79	24 W.	169. 96
All of	3	80	"	708. 23
S. ½ of S. W. ¼	7	"	"	86. 61
All of	9	"	"	640.
All of	11	"	"	640.
S. W. ¼ of N. E.; N. W. ¼; S. W. ¼, and W. ½ of S. E	13	"	"	440.
N. ½; *or* S. E	15	"	"	480.
N. E	17	"	"	160.
E. ½ of N. E	19	"	"	80.
All of	23	80	24 W.	640.
All of	25	"	"	640.
N. E. of N. E.; S. ½ of S. W.; N. ½ of N. W., and S. E. ¼	27	"	"	360.
E. ½ of S. E.; S. W. of S. E., and lot No. 1	29	"	"	129. 41
Lots 2, 3, 4, 5, 6, W. ½ of N. W. fr'l ¼	31	"	"	527. 43
N. E. of N. W., and S. W. fr'l ¼	33	"	"	240.
N. W., and W. ½ of S. E	35	"	"	80.
E. ½ of N. E	7	81	"	127. 32
W. ½ of S. W., and S. E. of S. W	19	"	"	642. 08
All of	21	"	"	40.
S. W. of S. W	27	"	"	80.
W. ½ of S. W	29	"	"	640.
All of	31	"	"	160.
S. E.	33	"	"	640.
All of	1	78	25	643. 65
S. ½ of N. E.; N. W. of N. E.; W. ½, and S. E. ¼	3	"	"	617. 12
E. ½; N. W. ¼, and E. ½ of S. W	11	"	"	200.
N. W. ¼ of N. W. ¼; S. E. ¼ of N. W. ¼; E. ½ of N. E., and S. W. ¼ of N. E.	13	"	"	80.
S. E. of S. E., and N. E. ¼ of S. E				9, 891. 81
Total of 2d column				
(3d column.) Lots No. 6, 7, and 8	13	"	"	151. 55
E. ½ of S. E	23	"	"	80.
N. W. of N. E.; N. E. of N. W.; N. W. of N. W.; E. ½ of S. E.; N. W. of S. E., and N. E. of S. W	25	"	"	280.
N. ½	1	79	"	364. 80
All of	3	"	"	681. 70
N. ½ of N. E	5	"	"	79. 91
E. ½; E. ½ of N. W.; N. W. of N. W., and E ½ of S. W	9	"	"	520.
All of	11	"	"	640.
N. E. of N. E., and E. ½ of S. W	13	"	"	120.
All of	15	"	"	640.
E. ½ of N. E., and E. ½ of S. E	21	"	"	160.
W. ½ of N. E.; S. E. of N. E., and W. ½, and S. E	23	79	25 W.	600.
All of	25	"	"	640.
E. ½; N. W. ¼; E. ½ of S. W. ¼, and N. W. of S. W	27	"	"	600.
W. ½ of N. E.; W. ½ of S. E., and W. ½	35	"	"	480.
S. ½ of N. E	1	80	"	80.
S. ½ of N. E.; E. ½ of S. E., and lots 1, 2, 3, 4, 5, 6, and 7	3	"	"	497. 21
All of	5	"	"	689. 74
All of	7	"	"	652.
All of	9	"	"	640.

319 Lots No. 1, 2, 3, 4, 5, 6, and 7	11	"	"	239. 63
Lots 3, 4, 7, and 8	13	"	"	180. 18
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	653. 04
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
S. W. of S. E. ; N. E. ¼, and W. ½	29	"	"	520.
N. E ¼; E. ½ N. W. ¼ and N. E. of S. E	31	"	"	280.
All of	33	"	"	640.
All of	35	"	"	640.
All of	3	81	"	616. 55
All of	5	"	"	617. 84
Total of 3d column				16, 844. 15
(4th column.) All of	7	81	25	674. 16
All of	9	"	"	640.
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	640.
E. ½; E. ½ of N. W. ; N. W. of N. W ; and E. ½ of S.W. ¼	19	"	"	529. 17
E. ½	21	"	"	320.
All of	23	"	"	640.
All of	25	"	"	640.
E. ½ of N. E., and W. ½ of N. W	27	81	25	160.
Lots No. 5, 6, 7, 8, and N. ½ of N. E	29	"	"	268. 37
All of	31	"	"	675. 62
Lots No. 2, 3, 5, 6, and S. W. ¼ of S. W. ¼	33	"	"	251. 91
All of	5	82	25	635. 18
All of	7	"	"	658. 86
W. ½ of N. W. ; W. ½ of S. W., and S. E. of S. W	9	"	"	200.
All of	17	"	"	640.
W. ½ of N. E. ; S. E. of N. E. ; W. ½; W. ½ of S. E., and N. E. of S. E ¼	21	"	"	560.
S. W. of N. W., and W. ½ of S. W	27	"	"	120.
All of	29	"	"	640.
All of	31	"	"	663. 10
All of	33	"	"	640.
W. ½ of N. E. ; W. ½, and W. ½ of S. E	7	83	"	467. 98
All of	19	"	"	653. 08
W. ½ of N. W., and S. W.	29	"	"	240.
All of	31	"	"	665. 52
All of	1	80	26	698. 18
All of	3	"	"	701. 92
E. ½; N. W. ¼, and N. E. of S. W	5	"	"	578. 78
E. ½; N. W., and E. ½ of S. W.	9	"	"	560.
All of	11	"	"	640.
All of	13	"	"	640.
N. ½, and N. ½ of S. E	15	"	"	400.
N. E. of N. E	23	"	"	40.
N. E. ¼; N. E. of N. W., and E. ½ of S. E	25	"	"	280.
Total of 4th column				18, 681. 83
(5th column.) S. E. ¼	1	81	26	160.
N. ½ of S. W. ; S. ½ of N. W. fr. ¼, and lots No. 1, 2, 3, 4, 5, 6, and S. W. of S. E	3	"	"	500. 56
All of	5	"	"	595. 26
All of	7	"	"	612. 08
All of	9	"	"	640.
S. W. of S. W., and lots 5, 6, 7, 8, and 9	11	"	"	302. 04
Lot 1; E. ½ of S. E., and N. ½	13	"	"	409. 35
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	81	26 W.	612.
All of	21	"	"	640.
N. ½ and S. E. ¼	23	"	"	480.
S. ½; S. E. ¼ of N. W. ¼, and lots 1, 2, 3, and 4	25	"	"	545. 42
All of	27	"	"	640.
All of	29	"	"	640.
N. E. ¼; N. E. ¼ of N. W. ¼; E. ½ of S. E. ¼, and N. W. ¼ of S. E. ¼	31	"	"	320.
All of	33	"	"	640.
All of	35	"	"	640.
N. fr'l ¼ of N. E. fr'l ¼; E. ½ of S. E. ¼; S. W. of S. E. ; W. ½ of S. W., and S. E. of S. W. ¼	1	82	"	317. 96
All of	3	"	"	648.
N. W. fr'l ¼ of N. E. ¼; W. fr'l ½ of N. W. ¼; N. E. fr'l ¼ of N. W. ¼; W. ½ of S. W. ¼; S. E. ¼ of S. W. ¼, and lots No. 4, 5, 6, 7, and 8	5	"	"	448. 90
All of	7	"	"	608.
All of	9	"	"	598. 46
E. ½, *of* N. W. ¼	11	"	"	480.
All of	13	"	"	640.
All of	15	"	"	597. 58
All of	17	"	"	640.

320 All of	19	"	"	613 24
All of	21	"	"	640.
E. ½, of N W. ¼	23	"	"	480.
W. ½ of N. W. ¼; N. E. ¼ of N. W. ¼; N. W. of S. W. ¼; E. ½ of S. E. ¼, and lots No. 1, 2, 3, 4, 5, 6, & 7	27	"	"	480. 36
All of	29	"	"	640.
Total of 5th column				17, 489. 21
(6th column.) All of	31	82	26 W.	621. 60
All of	33	"	"	640.
S. ½	35	"	"	320.
All of	1	83	"	521. 60
W. fr'l ½ of N. E. ¼ and W. fr'l ½ of	3	"	"	314. 86
E. fr'l ½ of N. E. and S. ½	5	"	"	373.
Lot No. 2	7	"	"	43. 15
All of	9	"	"	640.
E. ½; E. ½ of N. W. ¼; N. W. ¼ of N. W. ¼, and S. ½ of S. W. ¼	11	"	"	520.
All of	13	"	"	640.
W. ½ of S. W. ¼, and N. W. ¼	15	"	"	240.
N. E. ¼; N. ½ of N. W. ¼, and lots No. 1, 2, 3, 4, 6, 7, and 8	17	83	26 W.	513. 50
All of	19	"	"	616. 98
All of	21	"	"	631. 32
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	592. 36
All of	31	"	"	620.
All of	33	"	"	574. 92
W. ½; N. E. ¼, and N. ½ of S. E. ¼	35	"	"	560.
Total of 6th column				10, 903. 29

RECAPITULATION.

List No. 3.	First column		7, 897. 64
" "	Second	do	9, 891. 81
" "	Third	do	16, 844. 15
" "	Fourth	do	18, 681. 83
" "	Fifth	do	17, 489. 21
" "	Sixth	do	10, 903. 29
Total acres			81, 707. 29

DEPARTMENT OF THE INTERIOR,
October 30th, 1851.

The selections embraced in the within list No. 3 are hereby approved, in accordance with the views expressed in my letter of the 29th inst. to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the land officers by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

(Signed) ALEX. H. H. STUART,
Secretary.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
W. ½ of	7	79	23	349	22	1 25	.....	Oct. 1, '53	} Benjamin F. Allen	Benjamin F. Allen	Sept. 1, '53	} 3807
S E. ¼	"	"	"	160	00	.....	636 80	Oct. 1, '53	}			} 3807
S. E. of N. E. ¼	"	"	"	80	00	1 25	100 00	Oct. 13, '53	Foster Elliott	Foster Elliott	July 1, '58	3901
N. W. ¼ of N. E. ¼	"	"	"	40	00	1 25	50 00	Nov. 22, '53	Benjamin F. Allen	Benjamin F. Allen	July 1, '58	4220
N. E. ¼ of S. W. ¼	17	"	"	40	00	1 25	50 00	Nov. 15, '53	Charles Anderson	Charles Anderson	July 1, '58	4141
N. W. ¼ of N. W. ¼	"	"	"	40	00	1 25	50 00	Nov. 4, '53	Benjamin Bryant	Benjamin Bryant	July 1, '58	4032
S. W. ¼ of N. W. ¼	"	"	"	40	00	1 25	50 00	Nov. 5, '53	Jenkins W. Morris	Jenkins W. Morris	July 1, '58	4046
S. E. ¼ of N. W.	"	"	"	40	00	1 25	50 00	Nov. 11, '53	" "	" "	July 1, '58	4096
S. W. ¼ of N. E. ¼	"	"	"	40	00	1 25	50 00	March12, '53	Joseph Harden	Joseph Harden	July 1, '54	3358
N. W. ¼ of S. E. ¼	"	"	"	40	00	1 25	50 00	June 5, '53	George Doran	George Doran	July 1, '58	3480
N. W. ¼ of S. W. ¼	"	"	"	40	00	1 25	50 00	Nov. 7, '53	Seth Richards	Seth Richards	July 1, '58	3820
S. W. ¼ of S. W. ¼	31	80	23	47	34	1 25	59 17	Oct. 1, '53	William Lewis	William Lewis	July 1, '58	3820
N. W. ¼ of S. W. ¼	31	"	"	47	78	1 25	} 120 00	Oct. 13, '53	Joseph C. Thompson	Joseph C. Thompson	July 1, '58	} 3900
S. W. ¼ of N. W. ¼	"	"	"	48	22	1 25	}					} 3900
Lot No. 6	9	78	24	43	75	1 25	54 68¾	July 19, '52	Sam'l Gray	Sam'l Gray	Feb. 16, '53	2973
S. ½	17	"	"	320	00	1 25	400 00	July 1, '53	Phineas M. Casady	Phineas M. Casady	July 1, '53	3592
E. ½ of N. E. ¼	19	"	"	80	00	1 25	100 00	June 1, '53	Francis C. Grimmel	Francis C. Grimmel	July 1, '58	3470
W. ½ of N. E. ¼	"	"	"	80	00	1 25	100 00	June 25, '53	Phineas M. Casady	Phineas M. Casady	July 1, '58	3564
N. E. ¼ of N. W. ¼, W. ½ of N. W. ¼	19	"	"	122	83	1 25	158 35	M'ch 25, '52	Phineas M. Casady	Phineas M. Casady	Feb. 16, '53	2855
S. E. ¼ of N. W. ¼	19	"	"	} 206	44	1 25	258 05	June 23, '53	Cha's T. Sherman	Charles T. Sherman	July 12, '59	} 3559
S. W. ¼ of	19	"	"	}								} 3559
N. ½ of S. E. ¼	19	"	"	80	00	1 25	100 00	June 25, '53	Phineas M. Casady	Phineas M. Casady	July 1, '58	3564
S. ½ of S. E. ¼	"	"	"	80	00	2 00	160 00	M'ch 31, '52	Jesse Williams	Jesse Williams	July 1, '58	2952
N. W. ¼ of N. W. ¼	21	"	"	40	00	2 00	80-00	" " "	" "	" "	Feb. 16, '53	2953
W. ½ of N. E. ¼	29	"	"	80	00	} 1 25	200 00	Oct. 1, '53	Joseph B. Stewart	Joseph B. Stewart	Sept. 1, '58	} 3908
E. ½ of N. W. ¼	29	"	"	80	00	}						} 3809
N. W. ¼ of N. W. ¼	29	"	"	40	00	2 00	80 00	M'ch 31, '52	Jesse Williams	Jesse Williams	Feb. 16, '53	2954
W. ½ of S. W. ¼	29	"	"	80	00	1 25	100 00	July 28, '53	Reuben Jones	Reuben Jones	July 1, '58	3653
E. ½ of S. W ¼	29	"	"	80	00	1 25	100 00	Aug. 11, '53	" "	" "	July 1, '58	3682
N. E. ¼; N. ½ of S. E. ¼ & E. ½ of N. W. ¼	31	"	"	320	00	1 25	400 00	Nov. 9, '53	Robert Mcek	Robert Meek	July 1, '58	4062
N. ½ of N. E. ¼ & S. E. ¼ of N. E. ¼	1	79	24	133	45	1 25	166 81	Nov. 22, '53	Seth Richards	Seth Richards	July 1, '58	4219
S. W. ¼ of N. E. ¼	1	"	"	40	00	1 25	50 00	Oct. 8, '53	Byron Rice	Byron Rice	July 1, '58	3873
N. ½ of N. W. ¼	1	"	"	95	17	1 25	118 94	June 29, '53	Enoch Wood	Enoch Wood	July 1, '58	3582
S. ½ of S. W. ¼	1	"	"	80	00	1 25	100 60	M'ch 25, '52	Stephen Devilbiss	Stephen Devilbiss	Feb. 16, '53	2856
W. ½ of S. E. ¼	1	79	24	80	00	1 25	100 00	Oct. 3, '53	Byron Rice	Byron Rice	July 1, '58	3847
E. ½ of S. E. ¼	1	"	"	80	00	1 25	100 00	Oct. 1, '53	James Halterman	James Halterman	July 1, '58	3819
S. W. ¼ of N. W. ¼	3	"	"	40	00	1 25	80 00	M'ch 25, '52	John Hays	John Hays	Feb. 16, '53	2869
Lot No 5	5	"	"	49	70	1 25	62 13	Oct. 27, '53	Joseph B. Stewart	Joseph B. Stewart	Sept. 1, '58	3980
Lot No. 6	5	"	"	32	00	1 25	40 00	Nov. 9, '53	Daniel Rittgers	Daniel Rittgers	July 1, '58	4069
N. W. ¼ of S. W. ¼	5	"	"	40	00	1 25	50 00	Aug. 9, '53	Thomas McMullin	Thomas McMullen	Feb. 1, '58	3680
N. E. ¼ of N. E. ¼	7	"	"	40	00	1 25	50 00	Mc'h 25, '52	Walter Oyler	Walter Oyler	Feb. 16, '53	2857

List of Des Moines River lands—Continued.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
322 W. ½ of N. E. ¼	7	"	"	80	00	1 25	100 00	M'ch 25, '52	J. M. Lawson	Jacob M. Lawson	Feb. 16, '53	2858
S. W. ¼ of S. E. ¼	7	"	"	40	00	1 25	50 00	M'ch 25, '52	Jonathan W. Braner	Jonathan W. Braner	Feb. 16, '53	2859
S. W. ¼, *of* S. ½ of N. W. ¼	7	"	"	242	29	1 25	302 86½	M'ch 25, '52	Joseph Hiner	Joseph Hiner	Feb. 16, '53	2860
N. ½ of N. W. ¼	7	"	"	81	13	1 25	101 41¼	Oct. 12, '52	Daniel Fisher	Daniel Fisher	July 1, '58	3109
S. E. ¼ of S. E. ¼	7	"	"	40	00	1 25	50 00	June 4, '53	Nathaniel J. Powell	Nathaniel J. Powell	July 1, '58	3574
W. ½ of N. W. ¼	11	"	"	80	00	1 25	100 00	June 28, '53	David Timmerly	David Timmerly	July 1, '58	3574
W. ½ of S. E. ¼ / S. E. ¼ of S. W. ¼	11	"	"	120	00	1 25	150 00	Aug. 18, '53	Allen W. Hobson	Allen W. Hobson	Feb. 16, '53	3042 / 3042
W. ½ of N. E. ¼	11	"	"	80	00	1 25	100 60	M'ch. 25, '52	Nathaniel J. Powell	Nathaniel J. Powell	Feb. 16, '53	2870
N. E. ¼ of	13	"	"	160	00	1 25	200 00	Oct. 13, '53	Benjamin F. Allen	Benjamin F. Allen	Sept. 1, '58	3898
E. ½ of N. W. ¼	13	"	"	80	00	1 25	100 00	" 18, "	" " "	" " "	Sept. 1, '58	3923
S. E. ¼ of	13	"	"	160	00	1 25	200 00	" " "	Jenkins W. Morris	Jenkins W. Morris	July 1, '58	3924
W. ½ of S. W. ¼	13	"	"	80	00	1 25	100 00	" " "	Benjamin F. Pogue	Benjamin F. Pogue	July 1, '58	3925
E. ½ of S. W. ¼	13	"	"	80	00	1 25	100 00	Nov. 11, '53	Jenkin W. Morris	Jenkin W. Morris	Sept. 1, '58	4095
N. ½; *of* S. W. ¼	15	"	"	480	00	1 25	600 00	M'ch 25, '52	Henry S. Buzick	Henry S. Buzick	Feb. 16, '53	2861
S. E. ¼ S. E. ¼	15	"	"	40	00	1 25	50 00	" " "	Lawrance F. Tilson	Lawrence F. Tilson	Feb. 16, '53	2862
N. E. ¼ of S. E. ¼ & W. ½ of S. E. ¼	15	"	"	120	00	1 25	150 00	M'ch 25, '52	Nathan'l J. Powell	Nathan'l J. Powell	Feb. 16, '53	2863
Lots No. 7, 8, & 9; W ½ of S. W. ¼ S. E. ¼ of S. W. ¼	17	"	"	208	25	1 25	260 31	M'ch 25, '52	James Campbell	James Campbell	Feb. 16, '53	2864
S. E. ¼ of	19	"	"	160	00	1 25	200 00	" " "	W'm R. Close	William R. Close	Feb. 16, '53	2865
N. E. ¼ of	19	"	"	160	00	1 25	200 00	" " "	Henry Hintsenpiller	Henry Hintsenpiller	Feb. 16, '53	2866
N. E. ¼ of N. W. ¼, & W. ½ of N. W. ¼	"	"	"	126	68	1 25	158 35	" " "	Phineas M. Casady	Pheneas M. Casady	" " "	2855
S. E. ¼ of N. W. ¼	19	"	"	40	00	1 25	50 00	Dec. 2, '53	Seth Richards	Seth Richards	May 31, '59	4297
S. W. ¼ of	19	"	"	163	91	1 25	204 83¾	Oct. 12, '52	Daniel Fisher	Daniel Fisher	Feb. 16, '53	3108½
S. W. ¼ of N. W. ¼	21	"	"	40	00	1 25	50 00	July 19, '52	Albert G. Laymen	Albert G. Laymen	Feb. 16, '53	2963
N. W. ¼ of S. W. ¼	21	"	"	40	00	1 25	50 00	" " "	Jesse S. Dicks	Jesse S. Dicks	Feb. 16, '53	2964
S. W. ¼ of S. W. ¼	21	"	"	40	00	1 25	50 00	Aug. 15, '53	" " "	" " "	July 1, '58	3998
S. E. ¼ & S. ½ of N. E. ¼; E. ½ of N. W. ¼; N. W. ¼ of N. E. ¼, N. E. ¼ of N. W. ¼	23	79	24	400	00	1 25	500 00	July 10, '53	Thomas Hoffman	Thomas Hoffman	July 1, '58	3276
N. W. ¼ of N. W. ¼	23	"	"	40	00	1 25	50 00	" 19, '52	Stephen Brook	Stephen Brook	Feb. 16, '53	3962
S. W. ¼ of N. W. ¼, & N. W. ¼ S. W. ¼	23	"	"	80	00	1 25	100 00	Dec. 10, '52	Stephen Brook	Stephen Brook	July 1, '58	3222
S. E. ¼ of S. W. ¼	23	"	"	40	00	1 25	50 00	" " "	Benjamin F. Bowen	Benjamin F. Bowen	July 1, '58	3223
S. W. ¼ of S. W. ¼	23	"	"	40	00	1 25	50 00	July 19, '52	James Houlterman	James Halterman	Feb. 16, '53	2984
S. W. ¼ of N. W. ¼	25	"	"	40	00	1 25	50 00	Nov. 2, '53	Edwin Tyler	Edwin Tyler	July 1, '58	4022
S. E. ¼ of N. W. ¼	25	"	"	40	00	1 25	50 00	" 15, '53	Jenkin W. Morris	Jenkin W. Morris	July 1, '58	4146
N. W. ¼ of S. W. ¼	25	"	"	40	00	1 25	50 00	Aug. 15, "	Joseph B. Stewart	Joseph B. Stewart	Sept. 1, '58	3699
S. ½ of S. W. ¼	25	79	24	80	00	1 25	100 00	Oct. 21, '52	A. Scrogge & W. T. Scroggs	A. Scrogge & W. T. Scroggs	July 1, '58	3123
N. ½ of N. W.	29	"	"	80	00	1 25	100 00	March 25, '52	Nathaniel J. Powell	Nathaniel J. Powell	Feb. 16, '53	2867
N. ½ of N. E.	29	"	"	80	00	1 25	100 00	" " "	W'm W. Jones	William W. Jones	Feb. 16, '53	2868
N. W. fl ¼ of	31	"	"	169	96	1 25	212 45	Nov. 7, '53	Joseph B. Stewart	Joseph B. Stewart	Sept. 1, '58	4051
S. ½ of S. W. ¼	7	80	24	86	61	1 25	108 26	July 22, '52	Albert W. Wasson	Albert W. Wasson	Feb. 16, '53	3018

S. W. ¼	9	"	"	160	00	1	25	200	00	Nov.	6, '52	Jacob Wilson	Jacob Wilson	July	1, '58	3181
S. W. ¼ of	15	"	"	160	00	1	25	200	00	"	" "		" "	July	1, '58	3182
S. E. ¼ of	15	"	"	160	00	1	25	200	00	"	15, '53	Robert L. Tidrick	Robert L. Tidrick	July	1, 1858	4142
N. E. ¼ of N. E. ¼	17	"	"	40	00	1	25	50	00	Dec.	3, '52	George W. Hall	George W. Hall	July	1, '58	3217
S. E. ¼ of N. E. ¼	19	"	"	40	00	1	25	50	00	July	14, '53	Samuel Brown	Samuel Brown	July	1, '58	3279
N. E. ¼ of N. E. ¼	19	"	"	40	00	1	25	50	00	Oct.	28, '53	Joseph B. Stewart	Joseph B. Stewart	Sept.	1, '58	3990
S. W. ¼ of N. W. ¼, & N. W. ¼ of S. W. ¼	23	"	"	80	00	1	25	100	00	Nov.	29, '53	Seth Richards	Seth Richards	July	1, '58	4279
S. W. ¼ of S. W. ¼	23	"	"	40	00	1	25	50	00	"	11, '52	Ives Marks	Ives Marks	July	1, 1858	3195
E ½ of S. E. ¼	23	"	"	80	00	1	25	100	00	June	16, '53	Ezekiel Hannah	Ezekiel Hannah	July	1, 1858	3515
N. E. ¼ of	25	"	"	160	00	1	25	200	00	Dec.	5, '53	Calvin Thornton	Calvin Thornton	May	31, '59	4315
323 W. ½ of	25	80	24	320	00	1	25	400	00	Nov.	15, '53	Robert L. Tidrick	Robert L. Tidrick	July	1, '58	4143
N. E. ¼ of N. E. ¼	27	"	"	40	00	1	25	50	00	Nov.	25, '53	Seth Richards	Seth Richards	July	1, '58	4280
N. E. ¼ of S. E. ¼	27	"	"	40	00	1	25	50	00	July	19, '53	Nathaniel J. Powell	Nathaniel J. Powell	July	1, '58	3633
S. E. ¼ of S. E. ¼	27	"	"	40	00	1	25	50	00	Nov.	6, '52	Edmund Webb	Edmund Webb	July	1, '58	3633
N. W. ¼ of S. E. ¼	27	"	"	40	00	1	25	50	00	Oct.	21, '52	Lysander Harvey	Lysander Harvey	July	1, '58	3124
S. W. ¼ of S. E. ¼	27	"	"	40	00	1	25	50	00	M'ch	26, '52	" "	" "	July	1, '58	2872
S. W. ¼ of S. W. ¼	27	"	"	40	00	1	25	50	00	Nov.	16, '53	" "	" "	July	1, '58	4126
E. ½ of S. E. ¼	29	"	"	80	00	1	25	100	00	M'ch	26, '52	Ives Marks	Ives Marks	Feb.	16, '53	2877
S. W. ¼ of S. E. ¼	29	"	"	40	00	1	25	50	00	"	" "	Coonrad Diete	Coonrad Diete	Feb.	16 '53	2873
Lot No. 2	31	"	"	37	16	1	25	46	45	"	" "	Richard S. Proutz	Richard S. Proutz	Feb.	16, '53	2879
Lot No. 3	31	80	24	58	07	} 1	25	191	07½	March	26, '52	Edwin R. Clapp	Edwin R. Clapp	Feb.	16, '53	} 2876
Lots No. 4 & 5	31	"	"	94	79	}										} 2876
Lot No. 6	31	"	"	45	85	1	25	57	31⅓	"	" "	John W. Wilkin	John W. Wilkin	Feb.	16, '53	2875
N. E. ¼ of N. W. ¼	31	"	"	40	00	1	25	50	00	"	" "	Jonathan W. Braner	Jonathan W. Braner	Feb.	16, '53	2880
N. W. ¼ of N. W. ¼	31	"	"	43	10	1	25	53	87	Jan'y	27, '53	John Clary	John Clary	July	1, '58	3297
S. W. ¼ of N. W. ¼	31	"	"	42	96	1	25	53	70	Oct.	24, '53	Jacob Crum	Jacob Crum	July	1, '58	3958
W. ½ of S. W. ¼	31	"	"	85	50	1	25	106	87½	M'ch	26, '52	Stephen T. Grase	Stephen T. Grase	Feb.	16, '53	2879
E ½ of S. W. ¼	31	"	"	80	00	1	25	100	00	"	" "	William H. McHenry	William H. McHenry	Feb.	16, '53	2876
W. ½ of N. W. ¼	33	"	"	80	00	1	25	100	00	"	" "	Edwin R. Clapp	Edwin R. Clapp	Feb.	16, '53	2881
N. E. ¼ of N. W. ¼	33	"	"	40	00	1	25	50	00	"	" "	Edmund Webb	Edmund Webb	Feb.	16, '53	2883
S. E. ¼ of N. W. ¼	33	"	"	40	00	1	25	50	00	"	" "	Norman L. Vorse	Norman L. Vorse	Feb.	16, '53	2884
W. ½ of S. E. ¼	33	"	"	80	00	1	25	100	00	"	" "	Hendrick Raseboon	Hendrick Raseboon	Feb.	16, '53	2884
E. ½ of N. E. ¼	35	"	"	80	00	1	25	100	00	Oct.	3, '53	Caleb Richardson	Caleb Richardson	July	1, '58	3989
N. W. ¼ of N. E. ¼	1	78	25	54	53	1	25	68	16½	Oct.	28, '53	David Lamb	David Lamb	July	1, '58	3989
S. W. ¼ of N. E. ¼	1	"	"	40	00	1	25	50	00	"	5, "	Jno. W. Wilkin	John W. Wilkin	July	1, '58	3859
S. E. ¼ of N. E. ¼	1	"	"	40	00	1	25	50	00	M'ch	27, '52	Hezekiah Fagan	Hezekiah Fagan	Feb.	16, '53	2886
N. ½ of N. W. ¼	1	"	"	} 109	12	1	25	} 436	40	Oct.	1, '53	Herbert Geiger	Herbert Geiger	Feb.	1, '58	} 3837
S. ½ of N W. ¼	1	"	"	} 80	00	1	25	}								} 3837
S. W. ¼ of	1	"	"	} 160	00	1	25			"	" "		" "			
E. ½ of S. E. ¼	1	"	"	80	00	1	25	100	00	M'ch	27, '52	Amos B. Fuller	Amos B. Fuller	Feb.	16, '53	2885
W. ½ of S. E. ¼	1	"	"	80	00	1	25	100	00	"	" "	John W. Wilkin	John W. Wilkin	Feb.	16, '53	2885
N. E. ¼ of N. E. ¼	3	"	"	54	58	1	25	68	22½	Oct.	21, '52	Joseph Moth	Joseph Moth	July	1, '58	3127
N. W. ¼ of N. E. ¼	3	"	"	54	38	1	25	67	97½	Nov.	13, '52	Eli Frazier	Eli Frazier	July	1, '58	3199
N. W. ¼ of	3	"	"	188	16	1	25	235	20	M'ch	27, '52	John Crow	John Crow	July	16, '53	2888
S. ½ of N. E. ¼	3	"	"	80	00	1	25	100	00	Nov.	13, '52	Eli Frazier	Eli Frazier	July	1, '58	3199
S. ½ of S. E. ¼	3	"	"	80	00	1	25	100	00	M'ch	27, '52	Richard Ashsworth	Richard Ashsworth	Feb.	16, '53	2889
N. E ¼ of S. W. ¼	3	"	"	40	00	1	25	50	00	Nov.	25, '52	John Crow	John Crow	July	1, '58	3206
S. E. ¼ of S. W. ¼	3	"	"	40	00	1	25	50	00	May	23, '53	" "	" "	June	1, '55	3459
E. ½ of N. E. ¼	11	"	"	80	00	1	25	100	00	} M'ch	27, '52	Thomas McMullin	Tho's McMullin	Feb.	16, '53	} 2890
S. W. ¼ of N. E. ¼										}						}
S. E. ¼ of N. W. ¼	11	"	"	80	00	1	25	100	00	}						} 2890
N. W. ¼ of N. W. ¼	11	"	"	40	00	1	25	50	00	"	" "	Charles Murrow	Charles Murrow	Feb.	16, '53	2891

List of Des Moines River lands—Continued.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No of patent.
324 N. E. ¼ of N. E. ¼	13	"	"	40	00	1 25	50 00	Nov. 10, '53	Seth Richards	Seth Richards	July 1, '58	8940
S. E ¼ of N. E. ¼	23	79	25									
W. ½ of N. E. ¼	23	"	"									
& N. W. ¼	23	"	"	280	00	1 25	350 00	Octo. 6, '52	Johnson Pernett	Johnson Pernett	Feb. 16, '53	3160
N. ½ of S. E. ¼	23	"	"	180	00	1 25	100 00	Dec. 7, '53	Jenken W. Morris	Jenken W. Morris	May 31, '59	4343
S. E. ¼ of S. E ¼	23	"	"	40	00	1 25	50 00	Nov. 29, '53	Joseph B. Stewart	Joseph B. St.	July 1, '58	4283
S. W. ¼ of S. E. ¼	23	79	25	40	00	1 25	50 00	Dec. 7, '53	Rob't L. Tidrick	Rob't L. Tidrick	May 31, '59	4342
E. ½ of S. W. ¼	"	"	"	80	00	1 25	100 00	" " "	W'm McConkey	W'm McConkey	May 31, '59	4341
W. ½ of S. W. ¼	"	"	"	80	00	1 25	100 00	" 22 "	Miles White	Miles White	May 31, '59	4411
N. ½ of	27	"	"	230	00	1 25	600 00	Dec. 17, '53	Michael L. Devin	Michael L. Devin	May 31, '59	4400
S. E. ¼ of	27	"	"	160	00							4400
N. ½ of S. W. ¼ & S. E. ¼ of S. W. ¼	27	"	"	120	00	1 25	150 00	Dec. 17, '53	Michael L. Devin	Michael L. Devin	May 31, '59	4401
N. E. ¼ of	25	"	"	160	00	1 25	200 00	" 1, "	Joseph B. Stewart	Joseph R. Stewart	Ap'l 19, '59	4294
N. W. ¼ of	25	"	"	160	00	1 25	200 00	Nov. 15, "	" " "	" " "	July 1, '58	4145
S. W. ¼ of	25	"	"	160	00	1 25	200 00	M'ch 27, '52	Francis C. Grimmell	Francis C. Grimmell	Feb. 16, '53	2892
E. ½ of S. E. ¼	25	"	"	80	00	1 25	100 00	" " "	Henry C. Grimmell	Henry C. Grinnell	Feb. 16, '53	2893
W. ½ of S. E. ¼	25	"	"	80	00	1 25	100 00	" " "	Phineas M. Casady	Phineas M. Casady	Feb. 16, '53	2894
N. W. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	Aug. 18, '52	A. S. & N. T. Vorse	A. S. & N. T. Vorse	Feb. 16, '53	3058
S. W. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	M'ch 27, '52	Norman T. Vorse	Norman T Vorse	Feb. 16, '53	2895
N. ½ of N. W. ¼ & S. E ¼ of N. W. ¼	35	"	"	120	00	1 25	150 00	Oct. 25, '53	John Robinson	John Robinson	July 1, '58	3967
S. W. ¼	35	"	"	160	00	1 25	200 00	Dec. 2, '53	Seth Richards	Seth Richards	May 31, '59	4296
W. ½ of S. E. ¼	35	"	"	80	00	1 25	100 00	Nov. 14, '53	Addison L. & N. T. Vorse	Adison S. & N. T. Vorse	July 1, '58	4127
S. E. ¼ of N. E. ¼	1	80	25	40	00	1 25	50 00	" 25, "	W'm Van Dorn	W'm Van Dorn	July 1, '58	4237
S. W. ½ of N. E. ¼	1	"	"	40	00	1 25	50 00	July, 22, '52	George Beebe	George Beebe	Feb. 16, '53	3017
Lot No. 2	3		"	55	19	1 25	68 94	Aug. 13, '53	Thomas Murray	Thomas Murray	July 1, '58	3695
Lot No. 3	3	"	"	67	60	1 25	84 50	M'ch 27, '52	James Hunt	James Hunt	Feb. 16, '53	2897
Lot No. 4	3	"	"	35	35	1 25	44 18¾	" " "	Leonard M. Small	Leonard M. Small	Feb. 16, '53	2896
N. E. ¼ of N. E. ¼	5	"	"	52	81	1 25	66 01	Aug. 4, '53	Alfred Bowman	Alfred Bowman	July 1, '58	3669
S. E. ¼ of N. W. ¼	5	"	"	40	00	1 25	50 00	Nov. 2, "	Charles White	Charles White	July 1, '58	4019
E. ½ of S. W. ¼	5	"	"	80	00	1 25	100 00					
S. E. ¼ of	5	"	"	160	00	1 25	200 00	Octo. 15, '53	Charles White	Charles White	July 1, '58	3913
N. E. ¼ of	9	80	25	160	00	1 25	200 00	Octo. 24, '53	W'm Frazier	W'm Frazier	July 1, '58	3956
E. ½ of S. E. ¼	9	"	"	80	00	1 25	100 00	Aug. 13, '53	Nathan Andrews	Nathan Andrews	July 1, '58	3693
S. W. ¼ of	9	"	"	160	00	1 25	200 00	Oct. 15, '53	Charles White	Charles White	July 1, '58	3912
N. E. ¼ of N. W. ¼	9	"	"	40	00	1 25	50 00	Aug. 13, '53	Abraham Elliott	Abraham Elliott	July 1, '58	3692
N. W. ¼ of N. W. ¼ & S. ½ of N. W. ¼	9	"	"	120	00	1 25	50 00	Oct. 15, '53	Charles White	Charles White	July 1, '58	3912
Lot No. 1	11	"	"	43	01	1 25	153 76¼	Nov. 8, '52	Nathan Andrews	Nathan Andrews	July 1, '58	3187
Lot No. 2	11	"	"	38	44	1 25	48 05	Mc'h 27, '52	Nathan Andrews	Nathan Andrews	Feb. 16, '53	2898
Lot No. 6	11	"	"	24	34	1 25	30 42½	Nov. 11, '53	Daniel Berry	Daniel Berry	July 1, '58	4102
Lots No. 7 & 8	13	"	"	100	25	1 25	125 31¼	M'ch 27, '52	Seburn Hinton	Seburn Hinton	Feb. 16, '53	2901
Lot No. 3	13	"	"	22	00	1 25	27 52	Oct. 24, '53	William Frazier	W'm Frazier	July 1, '58	3957
Lot No. 4	13	80	25	57	93	1 25	72 41½	Dec. 5, '53	Abraham Elliott	Abraham Elliott	May 31, '59	4314

N. ½ of N. E. ¼	15	"	"	80	00	1	25	100	00	M'ch 27, '52	Nathan Andrews	Nathan Andrews	Feb.	16, '53	2899
S. ½ of N. E. ¼ N. ½ S. E. ¼	15	"	"	160	00	1	25	200	00	Aug. 13, '53	Abraham Elliott	Abraham Elliott	July	1, '58	3691
N. E. ¼ of N. W. ¼	15	"	"	40	00	1	25	50	00	Aug. 13, '53	Nathan Andrews	Nathan Andrews	July	1, '58	3694
W. ½ of N. W. ¼ / S. E. ¼ of N. W. ¼	15	"	"	120	00	1	25	150	00	Octo. 10, '53	Nathan Andrews	Nathan Andrews	July	1, '58	3876
S. W. ¼ of S. E. ¼ S. E. ¼ of S. W. ¼	15	"	"	80	00	1	25	100	00	Octo. 24, '53	Abraham Elliott	Abraham Elliott	July	1, '58	3955
S. W. ¼ of N. E. ¼	17	"	"	40	00	1	25	50	00	John Finley	John Finley	John Finley	July	1, '58	3841
S. E. ¼ of N. W. ¼	17	"	"	40	00	1	25	50	00	July 19, '53	Nathaniel J. Powell	Nathan'l J. Powell	July	1, '58	3630
S. W. ¼ of N. W. ¼	17	"	"	40	00	1	25	50	00	" " "	John Finley	John Finley	July	1, '58	3628
N. W. ¼ of S. W. ¼	17	"	"	40	00	1	25	50	00	Aug. 21, '53	Nathan'l J. Powell	Nathan'l J. Powell	July	1, '58	3729
325 E. ½ of S. W. ¼ W. ½ of S. E. ¼	17	"	"	160	00	1	25	200	00	July 19, '53	Nathan'l J. Powell	Nathaniel J. Powell	July	1, '58	3631
N. E. ¼ of N. E. ¼	21	"	"	40	00	1	25	50	00	Dec. 2, '53	Rob't Broadie	Rob't Broadie	May	31, '59	4298
S. E. ¼ of N. E. ¼	21	"	"	40	00	1	25	50	00	Nov. 8, '53	Andrew S. Stensus	Andrew S. Stensus	July	1, '58	4052
N. E. ¼ of N. W. ¼	21	"	"	40	00	1	25	50	00	M'ch 27, '52	Nathan'l J. Powell	Nathan'l J. Powell	Feb.	16, '53	2906
N. W. ¼ of N. W. ¼	21	"	"	40	00	1	25	50	00	July 19, '53	Nathan'l J. Powell	Nathan'l J. Powell	July	1, '58	3626
S. E. ¼ of N. W. ¼	21	"	"	40	00	1	25	50	00	July 19, '53	" " "	" " "	July	1, '58	3629
N. E. ¼ of N. E. ¼	23	"	"	40	00	1	25	50	00	Dec. 13, '52	W'm Frazier	W'm Frazier	July	1, '58	3225
N. W. ¼ of N. E. ¼	23	"	"	40	00	1	25	50	00	Nov. 3, '52	W'm Frazier, jr	W'm Frazier jr	July	1, '58	3173
S. W. ¼ of N. E. ¼	23	"	"	40	00	1	25	50	00	Dec. 13, '52	W'm Frazier	W'm Frazier	July	1, '58	3225
S. E. ¼ of N. E. ¼	23	"	"	40	00	1	25	50	00	Aug. 13, '53	Tabor W. McKean	Tabor W. McKean	July	1, '58	3696
E. ½ of N. W. ¼	23	"	"	80	00	1	25	150	00	Nov. 3, '53	Joseph B. Stewart	Joseph B. Stewart	Sept.	1, '58	4024
S. W. ¼ of S. W. ¼	23	"	"	40	00	1	25								
E. ½ of S. W. ¼	23	"	"	80	00	1	25	100	00	Oct. 3, '53	Byron Rice	Byron Rice	July	1, '58	3848
W. ½ of S. E. ¼	23	"	"	80	00	1	25	100	00	Aug. 13, '53	John A. Elliott	John A. Elliott	July	1, '58	3697
N. E. ¼ of S. E. ¼	23	"	"	40	00	1	25	50	00	May. 16, '53	John McClain	John McClain	June	1, '54	3498
S. E. ¼ of S. E. ¼	23	"	"	40	00	1	25	50	00	Aug. 13, '53	John McClain	John McClain	Feb.	16, '53	3053
N. E. ¼ of N. E. ¼	25	"	"	40	00	1	25	50	00	July 28, '52	Dr. F. Hunt	Dr. F. Hunt	Feb.	16, '53	3034
W. ½ of N. E. ¼	25	"	"	80	00	1	25	100	00	M'ch 27, '52	Joseph Hiner	Joseph Hiner	Feb.	16, '53	2903
N. E. ¼ of N. W. ¼	25	"	"	40	00	1	25	50	00	July 21, '52	Alexander Fouts	Alexander Fouts	Feb.	16, '53	3013
N. W. ¼ of N. W. ¼	25	"	"	40	00	1	25	50	00	June 7, '53	Alexander Fouts	Alexander Fouts	July	1, '58	3484
S. W. ¼ of N. W. ¼	25	"	"	40	00	1	25	50	00	May 9, '53	Alexander Fouts	Alexander Fouts	June	1, '54	3437
S. E. ¼ of N. W. ¼	25	"	"	40	00	1	25	50	00	May 27, '52	Nathan Andrews	Nathan Andrews	Feb.	16, '53	2700
N. E. ¼ of S. W. ¼	25	"	"	40	00	1	25	50	00	July 31, '52	Joseph Hiner	Joseph Hiner	Feb.	16, '53	3040
N. W. ¼ of S. W. ¼	25	"	"	40	00	1	25	50	00	Feb. 24, '53	Alexander Fouts	Alexander Fouts	June	1, '54	3338
S. W. ¼ of S. W. ¼	25	80	25	40	00	1	25	50	00	Nov. 3, '52	Alexander Fouts	Alexander Fouts	July	1, '58	3174
S. E. ¼ of S. W. ¼	25	"	"	40	00	1	25	50	00	May 14, '53	Samul Hunt	Samuel Hunt	June	1, '54	3443
N. W. ¼ of S. E. ¼	25	"	"	40	00	1	25	50	00	Nov. 3, '53	Joseph B. Stewart	Joseph B. Stewart	Sept.	1, '58	4023
S. E. ¼ of S. E. ¼	25	"	"	40	00	1	25	50	00	June 9, '53	James Hunt	James Hunt	July	1, '58	3491
6. E ½ of N. E. ¼ & N. E. ¼ of S. E. ¼	25	"	"	80	00	1	25	100	00	M'ch 27, '52	Dr. F. Hunt	Dr. F. Hunt	Feb.	16, '53	2904
N. E. ¼ of N. E. ¼	27	"	"	40	00	1	25	50	00	Octo. 4, '53	Isaac Hastings	Isaac Hastings	July	1, '58	3852
N. W. ¼ of N. W. ¼	27	"	"	40	00	1	25	50	00	Nov. 25, '53	Nathaniel J. Powell	Nathaniel J. Powell	July	1, '58	3245
N. ½ of S. W. ¼	27	"	"	80	00	1	25	100	00	Nov. 11, '53	Joseph B. Stewart	Joseph B. Stewart	Sept.	1, '58	4092
S. E. ¼ of S. E. ¼	27	"	"	40	00	1	25	50	00	Nov. 12, '52	Joseph B. Stewart	Joseph B. Stewart	July	1, '58	4114
S. E. ¼ of N. E. ¼ & N. E. ¼ of S. E. ¼	27	"	"	80	00	1	25	100	00	Octo. 25, '52	Andrew Clark	Andrew Clark	July	1, '58	3136
S. W. ¼ of N. E. ¼ & S. E. ¼ of N. W. ¼	29	"	"	80	00	1	25	100	00	Nov. 11, '53	Joseph B. Stewart	Joseph B. Stewart	Sept.	1, '58	4091
N. ½ of S. W. ¼	29	"	"	80	00	1	25	150	00	Aug. 27, '53	Nathan'l J. Powell	Nathaniel J. Powell	July	1, '58	3730
S. W. ¼ of S. E. ¼	29	"	"	40	00										3730
N. W. ¼ of	33	"	"	160	00	1	25	200	00	June. 13, '53	W'm T. Ayers	W'm T. Ayres	July	1, '58	3501
E. ½ of N. W ¼	33	"	"	80	00	1	25	100	00	Nov. 11, '53	Joseph B. Stewart	Joseph B. Stewart	Sep.	1, '58	4093
N. ½ of S. E. ¼	33	"	"	80	00	1	25	100	00	Nov. 11, '53	" " "	" " "	Sep.	1, '58	4093
S. ½ of S. E. ¼	33	"	"	80	00	1	25	100	00	Octo. 1, '53	John Finley	John Finley	July	1, '58	3840

List of Des Moines River lands—Continued.

Parts of sections.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
326 N. E. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	M'ch 27, '50	Samuel Hunt	Samuel Hunt	Feb. 16, '53	2905
S. E. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	Sept. 6, '50	Dr. F. Hunt	Dr. F. Hunt	Feb. 16, '53	3076
E. ½ of N. W. ¼, & S. W. ¼ of N. W. ¼	35	"	"	120	00	1 25	150 00	Nov. 12, '53	Joseph B Stewart	Joseph B. Stewart	July 1, '58	4113
N. W. ¼ of N. W. ¼	35	"	"	40	00	1 25	50 00	Oct. 13, '53	Nathaniel J. Powell	Nathaniel J. Powell	July 1, '58	3902
N. E. ¼ of S. E. ¼	35	"	"	40	00	1 25	50 00	Feb. 7, '53	Dr. F. Hunt	Dr. F. Hunt	July 1, '58	3308
N. W. ¼ of	3	81	25	147	06	1 25	183 82	Dec. 22, '53	Thomas Devin	Thomas Devin	May 13, '59	4419
S. W. ¼ of	3	"	"	160	00	1 25	200 00	Dec. 22, '53	Thomas Devin	Thomas Devin	May 31, '59	4422
N. E. ¼ of	5	"	"	149	31	1 25	186 63¾	Nov. 19, '53	Sarah T. Walker	Sarah T. Walker	July 1, '58	4203
N. W. ¼ of	5	"	"	148	53	1 25	186 66¼	Nov. 19, '53	Augustus D. Walker	Augustus D. Walker	July 1, '58	4201
S. W. ¼ of 5, S. E. ¼ of	5	"	"	160	00	1 25	200 00	Nov. 19, '53	John S. Walker	John S. Walker	July 1, '58	4204
N. ½ of N. W. ¼	7	"	"	88	54	1 25	110 67½	" 10, "	Henry Carr	Henry Carr	Feb. 1, '58	4088
S. E. ¼ of	7	"	"	160	00	1 25	200 00	" 29, "	Joseph C. Knapp	Joseph C. Knapp	July 1, '58	4281
W. ½ of N. E. ¼	9	"	"	80	00	1 25	100 00	M'ch 29, '52	Andrew S. Pierce	Andrew S. Pierce	Feb. 16, '53	2907
N. W. ¼ of	9	"	"	160	00	1 25	200 00	" " "	Richard Pierce	Richard Pierce	Feb. 16, '53	2906
N. W. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	Nov. 21, '52	" "	" "	July 1, '58	4213
S. E. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	" " "	Seth Richards	Seth Richards	July 1, '58	4214
S. W. ¼ of S. E. ¼	9	"	"	40	00	1 25	00	June 16, '52	Alexander Pierce	Alexander Pierce	July 1, '58	3516
N. W. ¼ of	11	81	25	160	00	1 25	200 00	Dec. 22, '52	Thomas Devin	Thomas Devin	May 31, '59	4423
S. W. ¼	11	"	"	160	00	1 25	200 00	" " "	Robert Meek	Robert Meek	May 31, '59	4418
S. E. ¼ of	11	"	"	160	00	1 25	200 00	Dec. 22, '53	Tho's Devin	Tho's Devin	May 31, '59	4420
N. W. ¼ of	13	81	25	160	00	1 25	200 00	" " "	" "	" "	May 31, '59	4424
N. ½ of S. W. ¼	13	"	"	80	00	1 25	100 00	" " "	" "	" "	May 31, '59	4424
S. ½ of S. W. ¼	13	"	"	80	00	1 25	100 00	" " "	Robert Meek	Robert Meek	May 31, '59	4417
S. E. ¼ of	13	"	"	160	00	1 25	200 00	" " "	Thomas Devin	Thomas Devin	May 31, '59	4421
N. E. ¼ of	15	"	"	160	00	1 25	200 00	July 16, '53	James F. Adams	James F. Adams	July 1, '58	3622
S. W. ¼ of N. W. ¼	15	"	"	40	00	1 25	50 00	May 16, '53	John H. Grigsby	John H. Grigsby	June 1, '54	3447
N. E. ¼ of S. W. ¼	15	"	"	40	00	1 25	50 00	M'ch 29, '52	Henry C. Dennison	Henry C. Dennison	Feb. 16, '53	2908
S. ½ of S. W. ¼	15	"	"	80	00	1 25	100 00	May 16, '53	John H. Grigsby	John H. Grigsby	June 1, '54	3447
W. ½ of S. E. ¼, S. E. ¼ of S. E. ¼	15	"	"	120	00	1 25	150 00	June 15, '53	Barnabas Hepersmith	Barnabas Hepersmith	July 1, '58	3510
N. E. ¼ of S. E. ¼	15	"	"	40	00	1 25	50 80	Nov. 14, '53	" "	" "	July 1, '58	4125
N. E. ¼ of	17	"	"	160	00	1 25	200 00	July 19, '52	John Wear	John Wear	Feb. 16, '53	2971
N. E. ¼ of N. W. ¼	17	"	"	40	00	1 25	50 00	July 19, '52	Henderson Harvey	Henderson Harvey	Feb. 16, '53	2997
N. W. ¼ of S. W. ¼	17	"	"	40	00	1 25	50 00	Dec. 9, '53	Edward Filmer	Edward Filmer	May 31, '59	4354
S. E. ¼ of S. W. ¼	17	"	"	40	00	1 25	50 00	Nov. 11, '53	Robert Logan	Robert Logan	July 1, '58	4103
S. W. ¼ of S. E. ¼	17	81	25	40	00	1 25	50 00	Ap'l 23, '53	Benjamin Hunt	Benjamin Hunt	June 1, '54	3421
E. ½ of S. E. ¼	17	"	"	80	00	1 25	100 00	July 22, '52	Josiah Hopkins	Josiah Hopkins	Feb. 16, '53	3019
N. E. ¼ of	19	"	"	160	00	1 25	200 00	M'ch 29, '52	Charles Roe	Charles Roe	Feb. 16, '53	2909
N. E. ¼ of N. W. ¼	19	"	"	40	00	1 25	50 00	M'ch 29, '52	Oliver Roe	Oliver Roe	Feb. 16, '53	2911
S. E. ¼ of N. W. ¼	19	"	"	40	00	1 25	50 00	M'ch 19, '52	Charles Roe	Charles Roe	Feb. 16, '53	2910
N. W. ¼ of N. W. ¼	19	"	"	49	17	1 25	61 46¼	July 22, '52	John H. Moots	John H. Moots	Feb. 16, '53	3014
E. ½ of S. W. ¼	19	"	"	80	00	1 25	100 00	M'ch 29, '52	Charles Roe	Charles Roe	Feb. 16, '53	2909

N. ½ of S. E. ¼	19	"	"	80	00	1	25	100	00	M'ch	19, '52	Charles Roe	Charles Roe	Feb. 16, '53	2910
S. E. ¼ of S. E. ¼	19	"	"	40	00	1	25	50	00	July	22, '52	Felix G. Farris	Felix G. Farris	Feb. 16, '53	3016
S. W. ¼ of S. E. ¼	19	"	"	40	00	1	25	50	00	Ap'l	23, '53	John Hall	John Hall	June 1, '54	3422
N. E. ¼ of N. E. ¼	21	"	"	49	17	1	25	50	00	July	16, '53	John Eslick	John Eslick	July 1, '58	3623
S. ½ of N. E. ¼	21	"	"	80	00	1	25	100	00	Oct.	1, '53	Elsberry Small	Elsberry Small	July 1, '58	3827
E. ½ of S. E. ¼	21	"	"	80	00	1	25	100	00	M'ch	29, '52	John Eslick	John Eslick	Feb. 16, '53	2913
W. ½ of S. E. ¼	21	"	"	80	00	1	25	100	00	"	"	George H. B. Hopkins	Geo. H. B. Hopkins	Feb. 16, '53	2912
S. ½ of N. E. ¼	23	"	"	80	00	1	25	100	00	Oct.	1, '53	Leonard M. Small	Leonard M. Small	July 1, '58	3828
N. E. ¼ of N. W. ¼	23	"	"	40	00	1	25	50	00	Nov.	22, '53	Phineas M. Casady	Phineas M. Cassady	July 1, '58	4223
S. E. ¼ of N. W. ¼	23	"	"	40	00	1	25	50	00	July	20, '53	Samuel Fowler	Sam'l Fowler	July 1, '58	3638
W. ½ of N. W. ¼	23	"	"	80	00	1	25	100	00	July	6, '53	John Kellison	John Kellison	July 1, '58	3601
327 N. W. ¼ of S. W. ¼	23	"	"	40	00	1	25	50	00	M'ch	29, '52	Leonard M. Small	Leonard M. Small	Feb. 16, '53	2914
S. W. ¼ of S. W. ¼	23	"	"	40	00	1	25	50	00	Aug.	26, '52	Leonard M. Small	Leonard M. Small	Feb. 16, '53	3073
E. ½ of S. W. ¼	23	81	25	80	00	1	25	100	00	July	20, '53	Samuel Fowler	Samuel Fowler	July 1, '58	3637
S. E. ¼ of	23	"	"	160	00	1	25	200	00	"	"	"	"	July 1, '58	2637
S. W. ¼ of N. E. ¼	25	"	"	40	00	1	25	50	00	Oct.	25, '53	John Crabtree	John Crabtree	July 1, '58	3960
N. W. ¼ of	25	"	"	160	00	1	25	200	00	"	"	James Long	James Long	July 1, '58	3966
W. ½ of S. W. ¼	25	"	"	80	00	1	25	100	00	M'ch	29, '52	John M. Nicenander	John M. Nicenander	Feb. 16, '53	2915
E. ½ of S. W. ¼	25	"	"	80	00	1	25	100	00	May	23, '53	John M. Nicenander	John M. Nicenander	June 1, '55	3456
S. W. ¼ of S. E. ¼	25	"	"	40	00	1	25	50	00	June	14, '53	James Crabtree	James Crabtree	July 1, '58	3505
N. W. ¼ of S. E. ¼	25	"	"	40	00	1	25	50	00	Oct.	20, '53	John Crabtree	John Crabtree	July 1, '58	3934
E. ½ of N. E. ¼	27	"	"	80	00	1	25	100	00	M'ch	29, '52	Leonard M. Small	Leonard M. Small	Feb. 16, '53	2916
N. W. ¼ of N. W. ¼	27	"	"	40	00	1	25	50	00	July	16, '53	John Provolt	John Provolt	July 1, '58	3621
S. W. ¼ of N. W. ¼	27	"	"	40	00	1	25	50	00	July	19, '52	John Wear	John Wear	Feb. 16, '53	2972
S. W. ¼ of	27	"	"	160	00	1	25	200	00	M'ch	17, '53	Edwin R. Clapp	Edwin R. Clapp	June 1, 54	3367
S. E. ¼ of	27	"	"	160	00	1	25	200	00	M'ch	15, '53	Benjamin F. Allen	Benj. F. Allen	June 1, '54	3362
Lot No. 8 & N. E. ¼ of N. E. ¼	29	"	"	84	05	1	25	102	56½	Aug.[39]	4, '52	Henderson Harvey	Hengerson Harvey	Feb. 16, '53	3043
Lot No. 7 and N. W. ¼ of N. E. ¼	29	"	"	90	14	1	25	112	67½	Nov.	19, '53	Tho's A. Walker	Tho's A. Walker	July 1, '58	4205
Lots 5 & 6	29	"	"	96	18	1	25	120	22½	July	19, '52	Russell Bowman	Ru-sell Bowman	Feb. 16, '53	2965
N. E. ¼ & E. ½ of N. W. ¼	31	"	"	240	00	1	25	300	00	Oct.	1, '53	Clement Murphy	Clement Murphy	July 1, '58	3822
W. ½ of N. W. ¼	31	"	"	97	80	1	25	123	33	"	"	W'm R. Snyder	W'm R. Snyder	July 1, '58	3824
N. ½ of S. E. ¼	31	"	"	80	00	1	25	100	00	"	"	Clement Murphy	Clement Murphy	July 1, '58	3823
N. E. ¼ of N. E. ¼ & S. E. ¼ of N. E ¼	33	"	"	85	79	1	25	210	80	May	6, '53	Leonard M. Small	Leonard M. Small	June 1, '54	3430
Lot No. 12, & N. E. ¼ of S. E. ¼	33	"	"	82	85										3430
Lots 3 & 4	33	"	"	79	28	1	25	99	10	Nov.	19, '53	Judith S. Walker	Judith S. Walker	July 1, '58	4206
Lot No. 2	33	"	"	65	80	1	25	82	25	M'ch	29, '52	Leonard M. Small	Leonard M. Small	Feb. 16, '53	2917
S. ½ of S. W. ¼	33	"	"	79	30	1	25	99	15	Aug.	4, '53	Alfred Bowman	Alfred Bowman	July 1, '58	3670
Lot No. 6	33	"	"	27	53	1	25	34	41	Nov.	19, '53	Judith S. Walker	Judith S. Walker	July 1, '58	4206
N. ½ of N. E. ¼	11	80	26	80	00	1	25	150	00	Oct.	1, '53	Moses Pilcher	Moses Pilcher	July 1, '58	3839
N. W. ¼ of S. E. ¼	11	"	"	40	00	1	25								
W. ½ of N. W. ¼	13	"	"	80	00	1	25	100	00	July	19, '53	Nathan'l J. Powell	Nathan'l J. Powell	July 1, '58	3632
N. ½ of S. E. ¼, & S. W. ¼ of S. E. ¼	1	81	26	120	00	1	25	150	00	Octo.	5, '53	Williboy Keith	Williboy Keith	July 1, '58	3858
Lots 5 & 6	3	"	"	113	01	1	25	141	37	July	5, '53	Cha's W. Gasten	Cha's W. Gasten	July 1, '58	3599
Lots No. 1 & 2, & S. ½ of N. W. ¼	3	"	"	169	85	1	25	212	31½	M'ch	30, '52	John Richhart	John Richhart	Feb. 16, '53	2918
N. E. ¼ S. W. ¼	3	81	26	40	00	1	25	50	00	Nov.	27, '52	James Morse	James Morse	July 1, '58	3209
Lot No. 3 & S. W. ¼ of S. E. ¼	3	"	"	98	20	1	25	122	78	M'ch	14, '53	Joseph Newland	Joseph Newland	June 1, '54	3360
Lot No. 4	3	"	"	39	50	1	25	49	37	Aug.	13, '53	Dan'l J. Skinner	Dan'l J. Skioner	July 1, '58	3686
N. ½ of N. E. ¼	5	"	"	58	25	1	25	72	81½	July	19, '52	Jesse S. Dicks	Jesse S. Dicks	Feb. 16, '53	3961
S. E. ¼ of N. E. ¼	5	"	"	40	00	1	25	50	00	July	28, '52	Jesse S. Dicks	Jesse S. Dicks	Feb. 16, '53	3035
S. W. ¼ of N. E. ¼	5	"	"	40	00	1	25	50	00	M'ch	30, '52	Crawford Cole	Crawford Cole	Feb. 16, '53	2919

List of Des Moines River lands.—Continued.

Parts of sections.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
328 N. ½ of N. W. ¼	5	"	"	57	01	1 25	71 26	Aug. 13, '53	Daniel S. Skinner	Daniel S. Skinner	July 1, '58	3690
S. E. ¼ of N. W. ¼	5	"	"	40	00	1 25	50 00	" " "	" " "	" " "	July 1, '58	3689
N. E. ¼ of S. W. ¼	5	"	"	40	00	1 25	50 00	July 30, '53	Sam'l Wilson Waldo	Sam'l Wilson Waldo	July 1, '58	3663
N. W. ¼ of S. W. ¼	5	"	"	40	00	1 25	50 00	" " "	Almeran Waldo	Almeran Waldo	July 1, '58	3660
S. ½ of S. W. ¼	5	"	"	80	00	1 25	100 00	Aug. 13, '53	Dan'l J. Skinner	Dan'l J. Skinner	July 1, '58	3688
N. E. ¼ of S. E. ¼	5	"	"	40	00	1 25	50 00	Nov. 27, '52	James Morse	James Morse	July 1, '58	3210
N. W. ¼ S. E. ¼	5	"	"	40	00	1 25	50 00	Aug. 13, '53	Dan'l J. Skinner	Dan'l J. Skinner	July 1, '58	3689
S. ½ of S. E. ¼	5	"	"	80	00	1 25	100 00	July 22, '53	Joseph Newland	Joseph Newland	July 1, '58	3289
E. ½ of N. E. ¼	9	"	"	120	00	1 25	150 00	July 19, '52	James W. Nice	James W. Nice	Feb. 16, '53	2959
S. W. ¼ of N. E. ¼	9	"	"									
N. W. ¼ of N. E. ¼	9	"	"	40	00	1 25	50 00	Oct. 26, '53	Jeduthan Waldo	Jeduthan Waldo	July 1, '58	3975
N. E. ¼ of N. W. ¼	9	"	"	40	00	1 25	50 00	" " "	John Newland	John Newland	July 1, '58	2974
N. W. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	M'ch 1, '53	John Reynolds	John Reynolds	July 1, '54	3343
S. W. ¼ of N. W. ¼	9	"	"	40	00	1 25	50 00	July 19, '52	Jeduthan Waldo	Jeduthan Waldo	Feb. 16, '53	2960
S. E. ¼ of N. W. ¼	9	"	"	40	00	1 25	50 00	July 19, '52	James W. Nice	James W. Nice	Feb. 16, '53	2959
N. E. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	July 19, '52	Jeduthan Waldo	Jeduthan Waldo	Feb. 16, '53	2960
N. W. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	Oct. 14, '53	W'm Wallace Waldo	W'm Wallace Waldo	July 1, '58	3618
S. E. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	July 13, '53	Josephus A. Waldo	Josephus A. Waldo	July 1, '58	3618
N. E. ¼ of S. E. ¼	9	"	"	40	00	1 25	50 00	" 22, '53	James W. Nice	James W. Nice	July 1, '58	3288
S. W. ¼ S. E. ¼	9	"	"	40	00	1 25	50 00	July 19, '52	James W. Nice	James W. Nice	Feb. 16, '53	3959
S. W. ¼ of S. E. ¼	9	"	"	40	00	1 25	50 00	Dec. 27, '52	Jeduthan Waldo	Jeduthan Waldo	July 1, '58	3241
Lot No. 6	11	"	"	45	62	1 25	57 02½	Nov. 19, '53	Judith S. Walker	Judith S. Walker	July 1, '58	4207
Lot No. 7	11	"	"	38	50	1 25	48 12½	May 11, '53	John W. Morris	John W. Morris	June 1, '55	3440
Lots No. 8 & 9	11	"	"	130	22	1 25	162 77½	July 22, '52	Frederick Shaffer	Frederick Shaffer	Feb. 16, '53	3015
Lot No. 5	11	"	"	47	70	1 25	59 62½	" 26, '52	John Spear	John Spear	Feb. 16, '53	3032
S. W. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Ap'l 5, '53	John Spear	John Spear	June 1, '54	3398
N. E. ¼ of N. E. ¼	13	"	"	40	00	1 25	50 00	Nov. 12, '53	Joseph B. Stewart	Joseph B. Stewart	July 1, '58	4112
S. W. ¼ of N. E. ¼	13	"	"	40	00	1 25	50 00	" " "	" " "	" " "	July 1, '58	"
S. E. ¼ of N. E. ¼	13	"	"	40	00	1 25	50 00	Oct. 21, '52	Lerew Lewis	Lerew Lewis	July 1, '58	3125
E. ½ of N. W. ¼												
N. W. ¼ of N. W. ¼	13	"	"	120	00	1 25	150 00	Nov. 12, '53	Joseph B. Stewart	Joseph B. Stewart	July 1, '58	4111
S. W. ¼ of N. W. ¼	13	81	26	40	00	1 25	50 00	M'ch 2, '53	Thomas Hazelton	Thomas Hazelton	June 1, '54	3345
E. ½ of S. E. ¼	13	"	"	80	00	1 25	100 00	" 30, '52	John Wear	John Wear	Feb. 16, '53	2920
N. E. ¼ of N. E. ¼	15	"	"	80	00	1 25	100 00	Dec. 23, '53	Phineas M. Cassady	Phineas M. Cassady	Feb. 25, '60	4428
N. W. ¼ of	15	"	"	160	00	1 25	200 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4188
N. W. ¼ of S. W. ¼	15	"	"	40	00	1 25	50 00	Aug. 26, '53	Elisha Lemon	Elisha Lemon	July 1, '58	3725
S. ½ of S. W. ¼	15	"	"	80	00	1 25	100 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4188
N. E. ¼ of S. W. ¼												
N. W. ¼ of S. E. ¼	15	"	"	80	00	1 25	100 00	July 30, '53	Elisha Lemon	Elisha Lemon	July 1, '58	3657 3657
E. ½ of S. E. ¼												
S. W. ¼ of S. E. ¼	15	"	"	120	00	1 25	150 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4189 4189
N. E. ¼ of	21	"	"	160	00	1 25	200 00	Nov. 25, '53	Marion Sheller	Marion Sheller	July 1, '58	4236

N. W. ¼ of	21	"	"	160	00	1 25	200 00	Dec.	26, '53	Thompson Bird	Thompson Bird	May	31, '59	4412
N. E. ¼ of N. E. ¼	23	"	"	40	00	1 25	50 00	July	8, '53	John Platt	John Platt	July	1, '58	3274
N. W. ¼ of N. E. ¼	23	"	"	40	00	1 25	50 00	Nov.	9, '53	Seth Richards	Seth Richards	July	1, '58	4079
S. E. ¼ of N. E. ¼	23	"	"	40	00	1 25	50 00	"	" "	Seth Richards	Seth Richards	July	1, '58	4077
S. W. ¼ of N. E. ¼, & E. ½ of N. W.	23	"	"	80	00	1 25	100 00	M'ch	30, '52	Bennett Huchinson	Bennett Huchinson	Feb.	16, '53	2922
N. E. ¼ of N. W. ¼	23	"	"	40	00	1 25	50 00	Nov.	7, '53	Alexander C. Newell	Alex'r C. Newell	July	1, '58	4052
N. W. ¼ of N. W. ¼	23	"	"	40	00	1 25	50 00	"	21, "	Joseph B. Stewart	Joseph B. Stewart	July	1, '58	4212
S. W. ¼ of N. W. ¼	23	"	"	40	00	1 25	50 00	M'ch	30, '52	Moses Pilcher	Moses Pilcher	Feb.	16, '53	2923
N. ½ of S. E. ¼, & S. E. ¼ of S. E. ¼	23	"	"	120	00	1 25	150 00	M'ch	20, '52	Bennett Huchinson	Bennett Huchinson	Feb.	16, '53	2921
S. W. ¼ of S. E. ¼	23	"	"	40	00	1 25	50 00	Nov.	4, '53	William Jacobs	W'm Jacobs	Feb.	1, '58	4031
329 Lots No. 1 & 2, & S. E. ¼ of N. W. ¼	25	"	"	145	47	1 25	191 75	Oct.	25, '53	Peter Perry	Peter Perry	July	1, '58	3969
Lot No. 3	25	"	"	51	70	1 25	64 62½	Ap'l	11, '53	Edward Thuinly	Edward Thuinly	July	1, '54	3403
Lot No. 4	25	"	"	28	25	1 25	35 31¼	M'ch	30, '52	John Wear	John Wear	Feb.	16, '53	2924
S. E. ¼ & E. ½ of N. W. ¼	25	"	"	240	00	1 25	320 00	Oct.	1, '53	W'm Snider	W'm Snider	July	1, '58	3825
N. W. ¼ of S. W. ¼	25	"	"	40	00	1 25	50 00	Dec.	31, '52	John Bailey	John Bailey	July	1, '58	3250
S. W. ¼ of S. W. ¼	25	"	"	40	00	1 25	50 00	May	23, '53	" "	" "	June	1, '58	3458
N. E. ¼ of N. E. ¼	27	"	"	40	00	1 25	50 00	Nov.	9, '53	Seth Richards	Seth Richards	July	1, '58	4078
S. E. ¼ of N. E. ¼	27	"	"	40	00	1 25	50 00	July	8, '53	John Platt	John Platt	July	1, '58	3275
W. ½ of N. E. ¼, E. ½ of N. W. ¼	27	"	"	160	00	1 25	200 00	Nov.	3, '52	Isaac Robins	Isaac Robins	July	1, '58	3172
E. ½ of N. E. ¼	27	"	"	80	00	1 25	100 00	Nov.	7, '53	Michael R. Miller	Michael M. Miller	July	1, '58	4053
N. W. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	Oct.	22, '53	William Jacobs	W'm Jacobs	July	1, '58	3954
N. E. ¼ of N. E. ¼	1	82	26	38	74	1 25	48 42½	Nov.	14, '53	John D. Sanford	John D. Sanford	July	1, '58	4130
N. W. ¼ of N. E. ¼	1	82	26	39	22	1 25	49 02½	Nov.	22, '53	Sam'l Luther	Sam'l Luther	July	1, '58	4221
S. ½ of S. W. ¼	1	"	"	80	00	1 25	100 00	Nov.	14, '53	John D. Sanford	John D. Sanford	July	1, '58	4128
S. E. ¼ of S. E. ¼	1	"	"	40	00	1 25	50 00	"	" "	" "	" "	July	1, '58	4128
N. E. ¼ of N. E. ¼	3	"	"	42	00	1 25	52 50	Dec.	5, '52	Robert Meek	Robert Meek	May	23, '59	4318
N. W. ¼ of N. E. ¼	3	"	"	42	00	1 25	52 50	M'ch	31, '52	Richard Greene	Richard Greene	Feb.	16, '53	2927
S. W. ¼ of N. E. ¼	3	"	"	40	00	1 25	50 00	Jan'y	1, '53	David Jones	David Jones	July	1, '58	3253
E. ½ of N. W. ¼	3	"	"	82	00	1 25	102 60	"	12, "	Ja's A. Cunningham	J. A. Cunningham	July	1, '58	3277
N. W. ¼ of N. W. ¼	3	"	"	42	00	1 25	52 50	Dec.	5, '53	Robert Meek	Robert Meek	May	31, '59	4317
N. E. ¼ of S. W. ¼	3	"	"	40	00	1 25	50 00	M'ch	31, '52	John Long	John Long	Feb.	16, '53	2925
S. E. ¼ of S. W. ¼	3	"	"	40	00	1 25	50 00	M'ch	31, '52	George Hull	George Hull	Feb.	16, '55	2926
W. ½ of S. E. ¼	3	"	"	80	00	1 25	100 00	Sep.	31, '52	John Long	John Long	Feb.	16, '53	2925
S. E. ¼ of S. E. ¼	3	"	"	40	00	1 25	50 00	Feb,	18, '53	Clark Luther	Clark Luther	July	1, '58	3327
Lot No. 4, N. W. ¼ of N. E. ¼	5	"	"	87	94	1 25	109 92½	Oct.	29, '53	Washington, J. & E. O. Nutt	Washington, J. & E. O. Nutt	July	1, '58	2997
N. W. ¼ of N. W. ¼	5	"	"	37	99	1 25	} 97 84¼	Dec.	5, '53	Rob't Meek	Robert Meek	May	23, '59	4320
W. ½ of S. W. ¼	5	"	"	40	00	1 25	}							
S. ½ of S. W. ¼	5	"	"	80	00	1 25	100 00	Nov.	8, '53	Seth Richards	Seth Richards	July	1, '58	4057
N. ½ of N. E. ¼	7	"	"	80	00	1 25	100 00	Nov.	10, "	Randolph Cox	Randolph Cox	July	1, '58	4080
E. ½ of N. E. ¼	7	"	"	80	00	1 25	100 00	Oct.	31, '53	John J. Boswell	John J. Roswell	July	1, '58	4009
W. ½ of S. E. ¼	7	"	"	80	00	1 25	100 00	Oct.	31, '53	Henry Kirby	Henry Kirby	July	1, '58	4010
Lot 3, & N. ½ of N. E. ¼	9	"	"	132	58	1 25	165 72½	Sep.	29, '52	Sarah Murphy	Sarah Murphy	Feb.	16, '53	3105
S. W. ¼ of N. W. ¼	9	"	"	40	00	1 25	50 00	Oct.	22, '52	James Berry	James Berry	July	1, '58	3132
Lot No. 5	9	"	"	20	72	1 25	26 00	Aug.	22, '53	Gilman Hornbuckle	Gilman Hornbuckle	July	1, '58	3718
E. ½ of N. W. ¼, & S. W. ¼ of S. W. ¼	9	"	"	120	00	1 25	150 00	"	" "	" "	" "	July	1, '58	3718
S. W. ¼ of S. E. ¼	9	"	"	40	00	1 25	50 00	Oct.	5, '53	Robert Jones	Robert Jones	Feb.	1, '58	3854
S. E. ¼ of S. E. ¼	9	"	"	40	00	1 25	50 00	Oct.	8, "	Sanford D. Williams	J. Sanford D. Williams	Feb.	1, '58	3874
Lot No. 7	9	"	"	50	00	1 25	62 50	Nov.	2, '53	David Miller	David Miller	July	1, '58	4018
N. W. ¼ of N. E. ¼	11	"	"	40	00	1 25	50 00	Nov.	14, '53	John D. Sanford	John D. Sanford	July	1, '58	4129
S. ½ of N. E. ¼	11	"	"	80	00	1 25	100 00	M'ch	31, '52	Jos'ua Wheeler	Joshua Wheeler	Feb.	16, '53	2929
N. E. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	"	" "	Jesse Hull	Jesse Hull	Feb.	16, '53	2932
N. W. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Ap'l	30, '53	Richard Greene	Richard Greene	June	1, '54	3427

List of Des Moines River lands—Continued.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
330 S. W. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Oct. 20, '53	George Keigley	George Keigley	July 1, '58	3935
N. ¼ of S. E. ¼	11	"	"	80	00	1 25	100 00	Nov. 26, '53	William Halston	William Halston	July 1, '58	4261
S. E. ¼ of S. E. ¼	11	"	"	40	00	1 25	50 00	M'ch 31, '52	William Holston	W'm Holston	Feb. 16, '53	2930
W. ¼ of N. W. ¼, N. W. ¼ of S. W. ¼	13	"	"	120	00	1 25	150 00	M'ch 31, '52	Samuel Luther	Samuel Luther	Feb. 16, '53	2931
S. W. ¼ of S. W. ¼	13	"	"	40	00	1 25	50 00	June 20, '53	Sam'l Luther	Sam'l Luther	July 1, '58	3576
N. E. ¼ of S. W. ¼	13	82	26	40	00	1 25	50 00	June 20, '53	Samuel Luther	Sam'l Luther	July 1, '58	3597
W. ½ of N. E. ¼	23	"	"	80	00	1 25	100 00	M'ch 31, 52	Henry Granes	Henry Granes	Feb. 16, '53	2934
W. ½ of N. W. ¼	23	"	"	80	00	1 25	100 00	" " "	Alfred Harris	Alfred Harris	Feb. 16, '53	2933
W. ½ of S. E. ¼	23	"	"	80	00	1 25	100 00	" " "	" "	" "	Feb. 16, '53	2933
N. E. ¼ of S. E. ¼	23	"	"	40	00	1 25	50 00	Oct. 7, '53	John Anderson	John Anderson	July 1, '58	3868
Lot No. 1	27	"	"	27	80	1 25	} 96 47	" 1, "	Cha's J. Anderson	Cha's J. Anderson	July 1, '58	} 3843
Lot No. 2	27	"	"	49	38	1 25						
Lot No. 3	27	"	"	37	33	1 25	46 66	" 7, "	John Anderson	John Anderson	July 1, '58	3867
Lot No. 5	27	"	"	49	55	1 25	62 93	M'ch 30, '53	W'm Noland	W'm Noland	June 1, '54	3388
Lot No. 6	27	"	"	19	75	1 25	24 68¾	Nov. 26, '53	Phineas M. Casady	Phineas M. Casady	July 1, '58	4225
Lot No. 7	27	"	"	36	20	1 25	45 25	M'ch 30, '53	W'm Noland	W'm Noland	June 1, '54	3388
N. E. ¼ of N. W. ¼	27	"	"	40	00	1 25	50 00	M'ch 30, '53	" "	" "	June 1, '54	3388
N. W. ¼ of N. W. ¼	27	"	"	40	00	1 25	50 00	Oct. 20, '53	" "	" "	Sept. 1, '58	3933
N. E. ¼ S. E. ¼	27	"	"	40	00	1 25	50 00	Dec. 6, '53	Robert Meek	Robert Meek	May 23, '59	4334
S. E. ¼ of S. E. ¼	27	"	"	40	00	1 25	50 00	Oct. 1, '53	Cha's J. Anderson	Cha's J. Anderson	July 1, '58	3843
S. E. ¼ of N. E. ¼	29	"	"	40	00	1 25	50 00	Sep. 8, '52	Elam S. Preston	Elam S. Preston	Feb. 16, '53	3082
N. W. ¼ of S. W. ¼	29	"	"	40	00	1 25	50 00	Oct. 13, '53	Jos. Miller	Jos. Miller	July 1, '58	3899
N. ½ of S. E. ¼	29	"	"	80	00	1 25	100 00	Jan. 15, '53	David Miller	David Miller	July 1, '58	3281
E. ½ of N. E. ¼	31	"	"	80	00	1 25	100 00	Sept. 8, '52	Elam S. Preston	Elam S. Preston	Feb. 16, '53	3083
N. ½ of N. E. ¼	33	"	"	80	00	1 25	100 00	Nov. 25, '52	Almeran Waldo	Almeran Waldo	July 1, '58	3205
N. E. ¼ of N. W. ¼	33	"	"	40	00	1 25	50 00	July 30, '53	John Blaugher	John Blaugher	July 1, '58	3661
N. W. ¼ of N. W. ¼	33	"	"	40	00	1 25	50 00	Oct. 1, '53	A'x'r P. Townsend	Alex. P. Townsend	July 1, '58	3836
S. ½ of N. W. ¼	33	"	"	80	00	1 25	100 00	Nov. 25, '52	Almeran Waldo	Almeran Waldo	July 1, '58	3205
S. W. ¼ of S. E. ¼	33	"	"	40	00	1 25	50 00	M'ch 31, '52	Jesse S. Dicks	Jesse S. Dicks	Feb. 16, '53	2935
S. E. ¼ of S. E. ¼	33	"	"	40	00	1 25	50 00	" " "	Crawford Cole	Crawford Cole	Feb. 16, '53	2935
N. E. ¼ of S. E. ¼	33	"	"	40	00	1 25	50 00	M'ch 29, '53	Montgomery McCall	Montgomery McCall	June 1, '54	3386
N. ½ of S. W. ¼	35	"	"	80	00	1 25	100 00	" 31, '52	Benjamin Williams	Benjamin Williams	Feb. 16, '53	2937
S. ½ of S. W. ¼	35	"	"	80	00	1 25	100 00	July 13, '53	Cha's W. Gastvon	Gha's W. Gastvon	July 1, '58	3617
S. E. ¼ of	35	"	"	160	00	1 25	200 00	M'ch 31, '52	Alfred Harris	Alfred Harris	Feb. 16, '53	2938
W. ½ of N. E. ¼, & E. ½ of N. W. ¼	1	83	26	100	00	1 25	126 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4193
W. ½ of N. W. ¼	1	"	"	50	40	1 25	63 00	" " "	" "	" "	July 1, '58	4197
S. W. ¼ of	1	"	"	160	00	1 25	200 00	" "	" "	" "	July 1, '58	4194
W. ½ of S. E. ¼	1	"	"	80	00	1 25	100 00	" "	" "	" "	July 1, '58	"
W. ½ of N. E. ¼	3	"	"	51	37	1 25	64 46	Oct. 10, '53	John M. Wear	John M. Wear	July 1, '58	3881
N. W. ¼ of	3	"	"	103	49	1 25	} 179 27½	Nov. 26, '53	Robert Meek	Robert Meek	July 1, '58	} 4268
N. E. ¼ of S. W. ¼	3	"	"	40	00	1 25						4268
N. W. ¼ of S. W. ¼	3	"	"	40	00	1 25	50 00	Nov. 6, '53	" "	" "	May 23, '69	4333

S. W. ¼ of S. W. ¼	3	83	26	40	00	1 25	50 00	Nov. 26, '53	Robert Meek	Robert Meek	July 16, '58		4270
S. E. ¼ of S. W. ¼	3	"	"	40	00	1 25	50 00	Dec. 5, '53	" "	" "	May 23, '59		4327
E. ¼ of N. E. ¼	5	"	"	53	00	1 25	66 25	Nov. 18, '53	" "	" "	July 1, '58		4162
S. W. ¼ of	5	"	"	160	00	1 25	200 00	Aug. 20, '53	Jacob Gutshall	Jacob Gutshall	July 1, '58		3708
N. W. ¼ of S. E. ¼	5	"	"	40	00	1 25	50 00	July 30, '53	John Howser	John Howser	July 1, '58		3658
N. E. ¼ of S. E. ¼	5	"	"	40	00	1 25	50 00	Oct. 1, '53	Nelson J. Meeker	Nelson J. Meeker	July 1, '58		3821
S. E. ¼ of S. E. ¼	5	"	"	40	00	1 25	50 00	M'ch 31, '52	John A. McFarland	John A. McFarland	Feb. 16, '53		2939
Lot No. 2	7	"	"	43	15	1 25	53 93¾	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58		4166
N. ½ of N. E. ¼	9	"	"	80	00	1 25	100 00	M'ch 31, '52	Uriah Hull	Uriah Hull	Feb. 16, '53		2940
E. ½ of N. W. ¼	9	"	"	80	00	1 25	100 00	Dec. 20, '52	James Harlin	James Harlin	July 1, '58		3230
331 W. ½ of N. W. ¼	9	"	"	80	00	1 25	100 00	" "	John Johnson	John Johnson	July 1, '58		3231
W. ½ of S. W. ¼	9	"	"	80	00	1 25	100 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58		4185
N. E. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	Nov. 5, '53	Ely H. Kellan	Ely H. Kellan	July 1, '58		4044
S. E. ¼ of S. W. ¼	9	"	"	40	00	1 25	50 00	" 17, '53	David A. Kellan	David A. Kellan	July 1, '58		4155
W. ½ of S. E. ¼, & S. W. ¼ of N. E. ¼	9	"	"	120	00	1 25	150 00	Oct. 10, '53	Robert A. Ware	Robert A. Ware	July 1, '58		3882
E. ½ of S. E. ¼, & S. E. ¼ of N. E. ¼	9	"	"	120	00	1 25	150 00	M'ch 31, '52	James Hull	James Hull	Feb. 16, '53		2941
N. W. ¼ of N. E. ¼	11	"	"	40	00	1 25	50 00	Ap'l 19, '53	Geo. W. Payne	Geo. W. Payne	June 1, '54		3415
N. E. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Ap'l 19, '53	John N. Latham	John N. Latham	June 1, '54		3414
N. W. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Nov. 17, '53	Woodson D. Parker	Woodson D. Parker	July 1, '58		4151
S. E. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Dec. 5, '53	Robert Meek	Robert Meek	May 23, '59		4323
S. W. ¼ of S. W. ¼	11	"	"	40	00	1 25	50 00	" 20, '52	George Hull	George Hull	Feb. 1, '58		3233
S. E. ¼ of S. W. ¼	11	"	"	40	00	1 25	50 00	Nov. 12 '53	Jno. B. Montgomery	Jno. B. Montgomery	July 1, '58		4118
N. W. ¼ of S. E. ¼	11	"	"	40	00	1 25	50 00	M'ch 31, '52	Woodson D. Parker	Woodson D. Parker	Feb. 16, '53		2942
N. ½ of N. W. ¼	15	"	"	80	00	1 25	100 00	Dec. 27, '52	Squire Boon	Squire Boon	July 1, '58		3238
W. ½ of S. W. ¼	15	"	"	80	00	1 25	100 00	Dec. 5, '53	Robert Meek	Robert Meek	May 23, '59		4325
N. ½ of N. E. ¼	17	"	"	80	00	1 25	100 00	Dec. 20, '52	John Johnson	John Johnson	July 1, 58		3232
N. W. ¼ of N. W. ¼	17	"	"	40	00	1 25	50 00	Ap'l 19, '53	Jacob Crooks	Jacob Crooks	June 1, '54		3413
Lot No. 2, & S. W. ¼ of N. E. ¼	17	"	"	71	45	1 25	89 31¼	Dec. 5, '53	Robert Meek	Robert Meek	May 23, '59		4326
Lot No. 8	17	"	"	27	62	1 25	32 59	Dec. 22, '53	Isaac Cooper	Isaac Cooper	May 31, '59		4413
N. ½ of	19	"	"	308	74	1 25	385 92½	Dec. 5, '53	Rob't Meek	Rob't Meek	May 23, '59		4322
N. ½ of N. E. ¼	21	"	"	80	00	1 25	100 00	M'ch 31, '52	John H. Hoffman	John H. Hoffman	Feb. 16, '53		2443
S. ½ of N. E. ¼	21	"	"	80	00	1 25	100 00	Oct. 1, '53	Dan'l P. Eppert	Dan'l P. Eppert	July 1, '58		3796
N. W. ¼ of N. W. ¼	21	"	"	39	42	1 25	49 27½	Dec. 22, '53	Joseph B. Stewart	Joseph B. Stewart	May 31, '59		4414
S. W. ¼ of N. W. ¼	21	"	"	36	80	1 25	46 00	Dec. 27, '52	Philip Hull	Philip Hull	July 1, '58		3240
S. W. ¼ of S. W. ¼	21	"	"	40	00	1 25	50 00	" "	" "	" "	July 1, '58		3240
S. E. ¼ of S. W. ¼	21	83	26	40	00	1 25	50 00	Feb. 18, '53	Philip Hull	Philip Hull	July 1, '58		3329
W. ½ of S. E. ¼	21	"	"	80	00	1 25	100 00	July 19, '52	Thomas Sparks	Thomas Sparks	Feb. 16, '53		2982
S. E. ¼ of S. E. ¼	21	"	"	40	00	1 25	50 00	" "	" "	" "	Feb. 16, '53		2982
N. E. ¼ of S. E. ¼	21	"	"	40	00	1 25	50 00	Dec. 27, '52	Philip Hull	Philip Hull	July 1, '58		3240
N. W. ¼ of N. E. ¼	23	"	"	40	00	1 25	50 00	" 5, '53	Robert Meek	Robert Meek	May 23, '59		4324
S. ½ of N. E. ¼	23	"	"	160	00	1 25	200 00	Nov. 26, '53	Rob't N. Cartwright	R'b't N. Cartright	July 1, '58		4264
N. ½ of S. E. ¼	23	"	"										3412
S. E. ¼ of S. E. ¼	23	"	"	40	00	1 25	50 00	Apr. 19, '53	Philip Hall	Philip Hall	June 1, '54		4324
S. W. ¼ of S. E. ¼	23	"	"	40	00	1 25	50 00	Dec. 5, '53	Robert Meek	Robert Meek	May 23, '59		3795
S. W. ¼ of	23	"	"	160	00	1 25	200 00	Oct. 1, '53	Dan'l P. Eppert	Daniel P. Eppert	July 1, '58		3239
N. W. ¼ of	23	"	"	160	00	1 25	200 00	Dec. 27, '52	Squire Boone	Squire Boon	July 1, '58		4041
E. ½ of N. W. ¼	25	"	"	120	00	1 25	150 00	Nov. 4, '53	Redrick Cartright	Redrick Cartright	July 1, '58		4003
& N. W. ¼ of N. W. ¼	25	"	"										
N. W. ¼ of N. E. ¼	27	"	"	40	00	1 25	50 00	Oct. 31, '53	James Gildea	James Gildea	July 1, '58		4328
S. ½ of N. E. ¼	27	"	"	80	00	1 25	100 00	Dec. 5, '53	Robert Meek	Robert Meek	May 23, '59		3944
N. ½ of N. W. ¼	27	"	"	80	00	1 25	100 00	M'ch 31, '52	William Sawyer	William Sawyer	Feb. 16, '53		2945
S. ½ of N. W. ¼	27	"	"	80	00	1 25	100 00	" " "	Samuel Sawyer	Samuel Sawyer	Feb. 16, '53		

List of Des Moines River lands—Continued.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
332 S. W. ¼ of	27	"	"	160	00	1 25	200 00	Feb, 18, '53	James E. Moss	James E. Moss	July 1, '58	3330
S. E. ¼ of	27	"	"	160	00	1 25	200 00	March 31, '53	James E. Moss	James E. Moss	Feb'y 16, '53	2946
Lot No. 4, & S. E ¼ of N. E. ¼	29	"	"	82	25	1 25	102 81¼	Dec. 5, '53	Robert Meek	Robert Meek	May 23, '53	4321
E. ½ of S. W. ¼, N. W. ¼ of S. W. ¼, & lots 8 & 9	29	"	"	189	66	1 25	237 07½	Nov. 12, '53	William J. Sparks	William J. Sparks	July 1, '58	4120
N. E. ¼ of	31	"	"	160	00	1 25	200 00	March 31, '53	Joshua Bennett	Joshua Bennett	July 1, '54	3387
E. ½ of N. W. ¼	31	"	"	80	00	1 25	100 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4165
E. ½ of S. E. ¼, & S. W. ¼ of S. E. ¼	31	"	"	120	00	1 25	150 00	Dec. 7, '53	" "	" "	May 23, '50	4340
E. ½ of N. E. ¼	33	"	"	80	00	1 25	100 00	Nov. 4, '53	Redick Cartright	Redick Cartright	July 1, '58	4040
Lot No. 6	33	"	"	41	00	1 25	51 25	M'ch 30, '53	Joshua Bennett	Joshua Bennett	June 1, '54	3387
S. W. ¼ of S. W. ¼	33	"	"	40	00	1 25	50 00	" "	" "	" "	June 1, '54	3387
Lot No. 8	33	"	"	31	85	1 25	39 81¼	Dec. 8, '53	" "	" "	Sept. 1, '58	4350
Lot No. 2	33	"	"	42	95	1 25	53 68¾	Nov. 17, '53	Thomas Edmund	Thomas Edmund	July 1, '58	4154
N. E. ¼ of S. E. ¼	33	"	"	40	00	1 25	50 00	Feb. 18, '53	Henry Bean	Henry Bean	July 1, '58	3328
S. E. ¼ of S. E. ¼	33	"	"	40	00	1 25	50 00	Nov. 17, '53	William Dyre	William Dyre	July 1, '58	4153
N. E. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	Nov. 25, '53	" "	" "	July 1, '58	4250
N. W. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	M'ch 31, '52	Clark Luther	Clark Luther	Feb'y 16, '53	2947
S. W. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	Feb'y 18, '53	John Long	John Long	July 1, '58	3332
S. E. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	Jan'y 12, '53	Ja's A. Cunningham	Ja's A. Cunningham	Feb'y 1, '58	3278
E. ½ of N. W. ¼	35	"	"	80	00	1 25	100 00	M'ch 31, '52	Clark Luther	Clark Luther	Feb'y 16, '53	2047
N. W. ¼ of N. W. ¼	35	83	26	40	00	1 25	50 00	M'ch 31, '52	Clark Luther	Clark Luther	Feb'y 16, '53	2947
S. W. ¼ of S. W. ¼	35	"	"	40	00	1 25	50 00	" "	William Dickinson	William Dickinson	Feb'y 16, '53	2948
S. W. ¼ of S. W. ¼	35	"	"	80	00	1 25	100 00	" "	Richard Greene	Richard Greene	Feb'y 16, '53	2950
N. E. ¼ of S. W. ¼	35	"	"	40	00	1 25	50 00	Nov. 25, '53	Peter Cagle	Peter Cagle	July 1, '58	4246
S. E ¼ of S. W. ¼	35	"	"	40	00	1 25	50 00	M'ch 31, '52	William Hull	William Hull	Feb'y 16, '53	2951
N. W. ¼ of S. E. ¼	35	"	"	40	00	1 25	50 00	Feb'y 18, '53	John Sturdivant	John Sturdivant	July 1, '58	3331
N. E. ¼ of S. E. ¼	35	"	"	40	00	1 25	50 00	M'ch 31, '52	John Long	John Long	Feb'y 16, '53	2949
N. E. ¼ of N. E. ¼	5	84	26	59	21	1 25	74 10¼	Nov. 11, '53	Thomas Cox	Thomas Cox	July 1, '58	4035
N. ½ of N. W. ¼, & N. W. ¼ of N. E. ¼	5	"	"	179	31	1 25	224 13	Sept. 12, '53	Michael Clapp	Michael Clapp	July 1, '58	3744
S. E. ¼ of N. E. ¼	5	"	"	40	00	1 25	50 00	Sept. 12, '53	Mary Wheeler	Mary Wheeler	July 1, '58	3743
S. E. ¼ of N. W. ¼	5	"	"	80	00	1 25	100 00	Nov. 4, '53	George Ward	George Ward	July 1, '58	4036
N. ½ of S. W. ¼	5	"	"	80	00	1 25	100 00	Octo. 17, '53	Josiah M. Thrift	Josiah M. Thrift	July 1, '58	3914
S. W. ¼ of S. W. ¼	5	"	"	40	00	1 25	50 00	Nov. 4, '53	George Ward	George Ward	July 1, '58	4037
S. E. ¼ of S. W. ¼	5	"	"	40	00	1 25	50 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4187
N. W. ¼ of S. E. ¼	5	"	"	40	00	1 25	50 00	Sep. 12, '53	Mary Wheeler	Mary Wheeler	July 1, '58	3743
N. E. ¼ of S. W. ¼	5	"	"	40	00	1 25	50 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4173
E. ½ of N. W. ¼	7	"	"	160	00	1 25	200 00	Nov. 17, '53	Joseph B. Stewart	Joseph B. Stewart	July 1, '58	4160
N. W. ¼ of N. E. ¼												
N. E. ¼ of N. W. ¼												
S. E. ¼ of S. E. ¼	7	"	"	40	00	1 25	50 00	Sept. 12, '53	Joshua W. Wheeler	Joshua W. Wheeler	July 1, '58	3746
E. ½ of	9	"	"	320	00	1 25	400 00	Nov. 14, '53	Alexander H. Woods	Alexander H. Woods	July 1, '58	4135

S. W. ¼ of N. W. ¼	9	"	"	40	00	1	25	50	00	"	17, '53	Lawrence Wahal	Lawrence Wahal	July	1, '58	4152
N. ½ of S. W. ¼	9	"	"	80	00	1	25	100	00	"	" "	" "	" "	July	1, '58	4153
S. ½ of S. W. ¼	9	"	"	80	00	1	25	100	00	"	4, "	Jeremiah Gorden	Jeremiah Gorden	July	1, '58	4038
W. ½ of	15	"	"	320	00	1	25	400	00	"	14, "	Andrew J. Por	Andrew J. Por	July	1, '58	4136
E. ½ of N. E. ¼	17	"	"	} 160	00	1	25	200	00	"	17, "	Robert L. Fidrick	Robert L. Fidrick	July	1, '58	4159
E. ½ of S. E. ¼	17	"	"													
W. ½ of S. E. ¼, & S. W. ¼ of N. E. ¼	17	"	"	120	00	1	25	150	00	"	18, "	Robert Meek	Robert Meek	July	1, '58	4195
E. ½ of S. W. ¼, & S. E. ¼ of N. W. ¼	17	"	"	120	00	1	25	150	00	"	18, "	Robert Meek	Robert Meek	July	1, '58	4195
N. E. ¼ of N. W. ¼	17	"	"	40	00	1	25	50	00	Sept.	12, '52	Frederick Hall	Frederick Hall	July	1, '58	3752
W. ½ of N. W. ¼ & W. ½ of S. W. ¼	17	"	"	160	00	1	25	200	00	"	" "	Joshua W. Wheeler	Joshua W. Wheeler	July	1, '58	3747
333 S. W. ¼ of ; S. ½ of N. E. ¼	19	"	"	272	58	1	25	340	62	Sept.	12, '53	William L. Pilcher	William L. Pilcher	July	1, '58	3749
N. ½ of S. W. ¼	19	84	26	76	04	1	25	95	05	Sept.	12, '53	William Thomas	William Thomas	July	1, '58	3751
S. ½ of S. W. ¼	19	"	"	75	88	1	25	94	85	"	" "	Jonathan Godden	Jonathan Godden	July	1, '58	3750
S. E. ¼ of	19	"	"	160	00	1	25	200	00	Octo.	31, '53	John A. McFarland	John A. McFarland	July	1, '58	4002
N. E. ¼ of	21	"	"	160	00	1	25	200	00	"	11, "	Samuel Snyder	Samuel Snyder	July	1, '58	3886
N. W. ¼	21	"	"	160	00	1	25	200	00	"	" "	John West	John West	July	1, '58	3885
W. ½ of S. W. ¼	21	"	"	80	00	1	25	100	00	Nov.	14, '53	John B. Sanford	John B. Sanford	July	1, '58	4132
S. E. ¼ of S. W. ¼	21	"	"	40	00	1	25	50	00	Oct.	10, '53	John Houser	John Houser	July	1, '58	3803
S. E. ¼, & N. E. ¼ of S. W. ¼	21	"	"	200	00	1	25	250	00	"	" "	Jacob Gutshall	Jacob Gutshall	July	1, '58	3884
S. ½ of N. W. ¼, & S. W. ¼ of	23	"	"	240	00	1	25	300	00	Nov.	14, '53	John B. Sanford	John B. Sanford	July	1, '58	4134
S. E. ¼ of, S. ½ of S. E. ¼, & E. ½ of S. W. ¼	27	"	"	320	00	1	25	400	00	Nov.	10, '53	Abraham E. Heaslett	Abraham E. Heaslett	July	1, '58	4083
W. ½ of S. W. ¼	27	"	"	80	00	1	25	100	00	Sept.	12, '53	John Latham	John Latham	July	1, '58	3753
N. ½ of S. W. ¼, S. E. ¼ of N. E. ¼	29	"	"	120	00	1	25	150	00	Sept.	12, '53	Ezekiel S. Hinton	Ezekiel S. Hinton	July	1, '58	3754
N. W. ¼ of	29	"	"	160	00	1	25	200	00	"	" "	Boone County	Boone County	July	1, '58	3741
W. ½ of S. W. ¼	29	"	"	80	00	1	25	100	00	"	" "	William Wibester	William Wibester	July	1, '58	3757
E. ½ of S. W. ¼	29	"	"	} 120	00	1	25	150	00	Sept.	12, '53	Bention Post	Bention Post	July	1, '58	3755
S. W. ¼ of N. E. ¼	29	"	"	}												
S. E. ¼ of	29	"	"	160	00	1	25	200	00	"	" "	Laban Latham	Laban Latham	July	1, '58	3756
E. ½ of N. E. ¼	31	"	"	80	00	1	25	100	00	"	" "	John Latham	John Latham	July	1, '58	3758
N. W. ¼ of N. E. ¼	31	"	"	40	00	1	25	50	00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4186
S. ½ of N. W. ¼	31	"	"	76	51	1	25	95	63½	"	" "	" "	" "	July	1, '58	4199
Lot No. 1	31	"	"	39	15	1	25	48	63½	"	18, '53	John Rose	John Rose	July	1, '58	4190
S. E. ¼ of S. E. ¼	31	"	"	40	00	1	25	50	00	Sept.	12, '53	John Latham	John Latham	July	1, '58	3758
N. ½ of N. E. ¼, N. E. ¼ of N. W. ¼	33	"	"	120	00	1	25	150	00	Sept.	12, '53	John Latham	John Latham	July	1, '58	3762
S. ½ of N. E. ¼, & S. E. ¼ of N. W. ¼	33	"	"	120	00	1	25	150	00	"	" "	Henry Hoffman	Henry Hoffman	July	1, '58	3759
N. W. ¼ of N. W. ¼	33	"	"	40	00	1	25	50	00	"	" "	Benjamin Williams	Benjamin Williams	July	1, '58	3760
S. W. ¼ of N. W. ¼	33	"	"	40	00	1	25	50	00	Nov.	5, '53	Joseph B. Stewart	Jo-eph B. Stewart	Sept.	9, '58	4045
S. E. ¼, & E. ½ of S. W. ¼	33	"	"	240	00	1	25	300	00	Sept.	12, '53	Michael Myers	Michael My rs	July	1, '58	3761
S. W. ¼ of N. W. ¼	35	"	"	40	00	1	25	50	00	Sept.	12, '53	James R. Payne	*July* 1, '58	July	1, '58	3763
W. ½ of S. W. ¼, & S. E. ¼ of S. W. ¼	35	"	"	120	00	1	25	150	00	"	" "	James Hull	James Hull	July	1, '58	4196
S. ½ of S. E. ¼	35	84	26	80	00	1	25	100	00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4196
S. W. ¼ of S. W. ¼	17	85	26	40	00	1	25	50	00	Dec.	10, '53	Jonathan C. James	Jonathan C. James	May	3, '59	4316
E. ½ of N. E. ¼	19	"	"	80	00	1	25	100	00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4171
E. ½ of N. W. ¼	19	"	"	80	00	1	25	100	00	"	17, "	Joseph Richardson	Joseph Richardson	July	1, '58	4156
S. E. ¼ of S. E. ¼	19	"	"	40	00	1	25	50	00	"	14, "	John D. Sanford	John D. Sanford	July	1, '58	4133
N. E. ¼ of S. E. ¼	19	"	"	40	00	1	25	50	00	Oct.	11, '53	Tyler Higbee	Tyler Higbee	July	1, '58	3879
N. ½ of N. E. ¼, & N. E. ¼ of N. W. ¼	29	"	"	120	00	1	25	150	00	Nov.	6, '53	Robert Meek	Robert Meek	July	1, '58	4271
S. W. ¼ of N. E. ¼	29	"	"	40	00	1	25	50	00	"	18, "	" "	" "	July	1, '58	4178
W. ½ of N. W. ¼, & S. E. ¼ of N. W	29	"	"	120	00	1	25	150	00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4177
N. E. ¼ of S. W. ¼	29	"	"	40	00	1	25	50	00	Nov.	6, '53	" "	" "	July	1, '58	4271

List of Des Moines River lands—Continued.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No. of patent.
334 N. ½ of S. E. ¼, S. E. ¼ of N. E. ¼ S. ½ of S. E. ¼	29	"	"	120	00	1 25	150 00	Sept. 12, '53	Willis L. Defere	Willis L. Defere	July 1, '58	3774
S. E. ¼ of N. E. ¼	29	"	"	80	00	1 25	100 00	Sept. 12, '53	Henry Friedly	Henry Fredly	July 1, '58	3775
W. ½ of N. E. ¼	31	"	"	40	00	1 25	50 00	" " "	Willis L. Defere	Willis L. Defere	July 1, '58	3775
S. E. ¼ of N. W. ¼	31	"	"	80	00	1 25	100 00	Dec. 5, '53	Robert Meek	Robert Meek	May 31, '59	4331
W. ½ of N. W. ¼	31	"	"	40	00	1 25	50 00	Octo. 17, "	Sophia Friedly	Sophia Friedly	July 1, '58	3918
S. E. ¼ of S. W. ¼, & S. W. ¼ of S. E. ¼	31	"	"	68	54	1 25	85 67	Dec. 5, '53	Robert Meek	Robert Meek	May 31, '59	4331
S. E. ¼ of S. E. ¼	31	"	"	80	00	1 25	100 00	Dec. 5, 53	Robert Meek	Robert Meek	May 23, '59	4330
N. E. ¼, & E. ½ of N. W. ¼	33	"	"	40	00	1 25	50 00	Sept. 12, '53	William Vontrees	William Vontrees	July 1, '58	3777
S. W. ¼ of N. W. ¼	33	"	"	40	00	1 25	300 00	Oct. 4, '53	Milburn C. Williams	Milburn C Williams	July 1, '58	3850
N. W. ¼ of S. W. ¼	33	"	"	40	00	1 25	50 00	" 1 7, "	Sarah Freedly	Sarah Freedly	July 1, '58	3986
S. ½ of S. E. ¼	33	"	"	80	00	1 25	100 00	Sept. 12, '53	Zachariah Vontrees	Zachariah Vontrees	July 1, '58	3778
N. W. ¼ of S. E. ¼	33	"	"	40	00	1 25	50 00	Nov. 18, '53	James M. Strutz	James M. Strutz	July 1, '58	4192
S. ½ of S. E. ¼	9	87	87	80	00	1 25	100 00	Dec. 17, '53	Benj. F. Allen	B. F. Allen	Ap'l 20, '59	4394
S. E. ¼ of N. E. ¼	15	"	"	40	00	1 25	50 00	Oct. 27, '53	Roscoe Buyster	Roscoe Buyster	July 1, '58	3981
S. E. ¼ of N. W. ¼	"	"	"	40	00	1 25	50 00	Nov. 26, '53	Peter F. Byran	Peter F. Bryan	July 1, '58	4260
N. W. ¼ of N. E. ¼	17	"	"	40	00	1 25	50 00	Dec. 13, '53	Solomon Keeighler	Solomon Keeighler	May 31, '59	4372
W. ½ of N. W. ¼	17	"	"	40	00	1 25	50 00	Sept. 12, '53	Benjamin Bell	Benjamin Bell	July 1, '58	5783
N. W. ¼ of S. W. ¼	17	"	"	120	00	1 25	150 00	" " "	Benjamin Bell	Benjamin Bell	July 1, '58	3782
S. E. ¼ of S. W. ¼	17	"	"									
S. ½ of S. E. ¼	17	"	"	40	00	1 25	50 00	Dec. 7, '53	Benjamin Bell	Benjamin Bell	May 31, '59	4395
S. E. ¼ of S. W. ¼	21	"	"	80	00	1 25	150 00	Sept. 12, '53	Peasley C. Bell	Peasley C. Bell	July 1, '58	3784
S. W. ¼ of S. W. ¼	29	"	"	40	00	1 25	50 00	" " "	Washington Neece	Washington Neece	July 1, '58	3786
Lots No. 1, 2, & 3	1	83	27	40	00	1 25	50 00	" " "	James Craig	James Craig	July 1, '58	3785
Lot No. 4	1	"	"	150	24	1 25	187 80	Oct. 20, '53	John Rose	John Rose	July 1, '58	3938
Lots No. 7, 8, & 9	1	"	"	50	47	1 25	63 08	Nov. 4, '53	Samuel D. McCall	Sam'l D. McCall	July 1, '58	4039
W. ½ of N. W. ¼	1	"	"	119	56	1 25	149 38½	Dec. 5, '53	Christopher Rogers	Christopher Rogers	May 31, '59	4316
S. W. ¼ of S. W. ¼	1	"	"	52	70	1 25	65 87	Nov. 4, '53	Samuel D. McCall	Samuel D. McCall	July 1, '58	4039
S. ½ of N. E. ¼, & N. ½ of S. E. ¼	11	"	"	40	00	1 25	50 00	" 18, "	Robert Meek	Robert Meek	July 1, '58	4176
N. W. ¼ of	11	"	"	160	00	1 25	200 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4163
S. W. ¼ of S. E. ¼	11	"	"	160	00	1 25	200 00	Sept. 12, '53	Joseph M. Harvey	Joseph M. Harvey	July 1, '58	{ or 4 { 3 (7)42
S. W. ¼ of N. E. ¼, & N. E. ¼ of S. W ¼	13	"	"	40	00	1 25	50 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4175
N. W. ¼ of S. W. ¼	13	"	"	80	00	1 25	100 00	Oct. 31, '53	Amos M. Rose	Amos M. Rose	July 1, '58	4163
N. E. ¼ of N. E. ¼	25	"	"	40	00	1 25	50 00	Nov. 18, '53	Amos M. Rose	Amos M. Rose	July 1, '58	4191
N. W. ¼, & N. ¼ of S. W. ¼	25	"	"	40	00	1 25	50 00	" 25, "	William R. Harris	William R. Harris	July 1, '58	4249
Lots No. 1 & 2	1	84	27	240	00	1 25	300 00	Dec. 13, '53	Joseph B. Stewart	Joseph B. Stewart	Ap'l 9, '59	4366
Lot No. 3	1	"	"	85	59	1 25	106 98¾	Nov. 26, '53	Willis L. Defere	Willis L Defere	July 1, '58	4262
S. E. ¼ of S. W. ¼	3	"	"	48	03	1 25	60 03¾	" " "	Robert Meek	Robert Meek	July 1, '58	4269
S. ½ of N. E. ¼, & S. E. ¼ of N. W. ¼	11	"	"	40	00	1 25	50 00	Sept. 12, '53	Andrew Johnson	Andrew Johnson	July 1, '58	3765
N. E. ¼ of S. E. ¼	11	"	"	120	00	1 25	150 00	Nov. 18, '53	Robert Meek	Robert Meek	July 1, '58	4170
				40	00	1 25	50 00	Nov. 26, '53	Robert Meek	Robert Meek	July 1, '58	4265

N. F. ¼ of S. W. ¼	11	"	"	40	00	1 25	50 00	Sept.	12, '53	William Hall	William Hall	July	1, '58	2766
N. W. ¼ of S. W. ¼	11	"	"	40	00	1 25	50 00	Nov.	26, '53	Robert Meek	Robert Meek	July	1, '58	4265
Lots No. 1, 2, & 3	13	"	"	110	21	1 25	144 01	Sept.	12, '53	Michael Sapp	Michael Sapp	July	1, '58	3745
Lot No. 4	13	"	"	41	50	1 25	51 89	"	" "	Jeremiah Gorden	Jeremiah Gorden	July	1, '58	3768
Lot No. 5, & N. E. ¼, of N. W. ¼	13	"	"	88	67	1 25	110 83	Sept.	12, '53	James Corbin	James Corbin	July	1, '58	3767
Lot No. 6	13	"	"	60	73	1 25	75 91	Oct.	29, '53	James Corbin	James Corbin	July	1, '58	3994
Lot No. 7, & N. W. ¼ of S. W. ¼	13	"	"	92	94	1 25	116 17½	Dec.	5, '53	Robert Meek	Robert Meek	May	23, '59	4329
Lot No. 8	13	"	"	26	51	1 25	33 13½	Oct.	29, '53	Isaac Nutt	Isaac Nutt	July	1, '58	3995
S. W. ¼ of N. W. ¼	13	"	"	40	00	1 25	50 00	"	" "	William C. Crooks	William C. Crooks	July	1, '58	3996
S. ½ of S. W. ¼	13	"	"	80	00	1 25	100 00	Nov.	4, '53	Isaac Nutt	Isaac Nutt	July	1, '58	4034
335 S. E. ¼ of S. E. ¼	15	"	"	40	00	1 25	50 00	Oct.	25, '53	James Speckelmire	Elisha Speckelmire	July	1, '58	3963
S. E. ¼ of S. W. ¼	15	"	"	40	00	1 25	50 00	Sept.	12, '53	Elisha Speckelmire	Elisha Speckelmire	July	1, '58	3769
S. E. ¼ of N. E. ¼	21	84	27	40	00	1 25	50 00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4174
N. W. ¼ of S. W. ¼	21	"	"	40	00	1 25	50 00	Oct.	25, '53	Peter Dentiel	Peter Dentiel	July	1, '58	3964
N. E. ¼ of S. E. ¼	21	"	"	40	00	1 25	50 00	Nov.	26, '53	Robert Meek	Robert Meek	July	1, '58	4266
Lots No. 1 & 2	23	84	27	73	86	1 25	92 32	Sept.	12, '53	James B. Hamilton	James B. Hamilton	July	1, '58	3771
Lots No. 3 & 4	23	"	"	78	94	1 25	} 248 67	Oct.	25, '53	James Speckelmire	James Speckelmire	} July	1, '58	3962
W. ½ N. W. ¼, & N. E. ¼ of N. W. ¼	23	"	"	120	00	1 25	}					} July	1, '58	3963
Lots No. 5 & 6	23	"	"	85	90	1 25	107 37½	Nov.	12, '53	John Pea, senior	John Pea, s'r	July	1, '58	4119
Lot No. 9	23	"	"	39	70	1 25	49 76½	"	26, "	Robert Meek	Robert Meek	July	1, '58	4267
Lot No. 7, & S. W. ¼ of S. E. ¼	23	"	"	79	58	1 25	99 47½	"	14, "	John D. Sanford	John D. Sanford	July	1, '58	4131
E. ½ of S. E. ¼	23	"	"	80	00	1 25	100 00	Sept.	12, '53	Jacob Hoffman	Jacob Hoffman	July	1, '58	3770
N. E. ¼ of N. E. ¼	25	"	"	40	00	1 25	50 00	Nov.	25, '53	Bryan B. Martin	Bryan B Martin	July	1, '58	4247
N. W. ¼ of N. E. ¼	25	"	"	40	00	1 25	50 00	Sept.	12, '53	Joshua W. Wheeler	Joshua W. Wheeler	July	1, '58	3748
S. E. ¼ of N. E. ¼	25	"	"	40	00	1 25	50 00	Nov.	25, '53	James M. Mortin	James M. Mortin	July	1, '58	4248
S. W. ¼ of N. E. ¼	25	"	"	40	00	1 25	50 00	Dec.	7, '53	Joshua Wheeler	Joshua Wheeler	May	31, '59	4351
E. ½ of N. W. ¼	25	"	"	80	00	1 25	100 00	Nov.	10, '53	Abraham E. Heaslett	Abraham E. Heaslett	July	1, '58	4084
W. ½ of N. W. ¼	25	"	"	80	00	1 25	100 00	Oct.	15, '53	William M. Boon	William M. Boon	July	1, '58	3907
E. ½ of S. W. ¼	25	"	"	71	70	1 25	89 62½	Dec.	7, '53	William Bell	William Bell	May	31, '59	4337
N. W. ¼ of S. E. ¼	25	"	"	40	00	1 25	50 00	Oct.	31, '53	William Holmes	William Holmes	July	1, '58	4000
N. E. ¼ of S. E. ¼	25	"	"	40	00	1 25	50 00	Nov.	12, '53	William C. Bell	William C. Bell	July	1, '58	4117
Lots No. 1 & 2, & N. E. ¼ of S. E. ¼	27	"	"	115	53	1 25	144 41	Sept.	12, '53	Samuel Eccles	Samuel Eccles	July	1, '58	3772
S. E. ¼ of S. E. ¼	27	"	"	40	00	1 25	50 00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4164
N. E. ¼ of N. W. ¼	27	"	"	40	00	1 25	50 00	Dec.	2, '53	Joseph B. Stewart	Joseph B. Stewart	Ap'l	9, '59	4299
Lots No. 1 & 2	35	"	"	74	89	1 25	93 61½	Nov.	18, '53	Robert Meek	" "	July	1, '58	4169
Lot No. 3	35	"	"	26	36	1 25	32 95	"	" "	" "	" "	July	1, '58	4167
S. E. ¼ of	35	"	"	160	00	1 25	200 00	Sept.	12, '53	John A. McFarland	John A. McFarland	July	1, '58	3773
E. ½ of S. E. ¼	1	85	27	80	00	1 25	100 00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4184
E. ½ of S. W. ¼	1	"	"	80	00	1 25	100 00	"	23, "	Thomas C. Kennedy	Thomas C. Kennedy	July	1, '58	4230
S. E. ¼ of N. E. ¼ N. E. ¼ of S. E. ¼	3	"	"	80	00	1 25	100 00	Sept.	12, '53	Ezra Rathburn	Ezra Rathburn	July	1, '58	3779
Lot No. 7, & N. W. ¼ of N. W. ¼	3	"	"	99	20	1 25	124 00	Nov.	18, '53	Robert Niece	Robert Niece	July	1, '58	4182
N. E. ¼ of N. E. ¼	9	"	"	40	00	1 25	50 00	"	" "	" "	" "	July	1, '58	4183
Lots No. 3, 6, & 7	11	"	"	118	46	1 25	148 06	Sept.	12, '53	John W. Tomlinson	John W. Tomlinson	July	1, '58	3780
Lot No. 3, & W. ½ of S. E. ¼, & S. E. ¼ of S. W. ¼	11	"	"	154	85	1 25	193 56¼	Nov.	25, '53	William Phipps	William Phipps	July	1, '58	4251
N. E. ¼ of	13	"	"	160	00	1 25	200 00	"	23, '53	Thomas C. Kennedy	Thomas C. Kennedy	July	1, '58	4229
N. W. ¼ of S. E. ¼	13	"	"	40	00	1 25	50 00	"	18, "	Robert Meek	Robert Meek	July	1, '58	4181
E ½ of S. E. ¼	15	85	27	80	00	1 25	100 00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4179
E. ½ of N. E. ¼	23	"	"	80	00	1 25	100 00	Dec.	16, '53	B. F. Allen	B. F. Allen	Ap'l	20 '59	4390
N. E. ¼ of N. E. ¼	25	"	"	40	00	1 25	50 00	Nov.	26, '53	Joseph Richardson	Joseph Richardson	July	1, '58	4263
N. E. of N. W. ¼	25	"	"	40	00	1 25	50 00	Nov.	18, '53	Robert Meek	Robert Meek	July	1, '58	4180

List of Des Moines River lands—Continued.

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Price per acre.	Amount.	Date of sale.	Name of purchaser.	To whom patented.	Date of patent.	No of patent.
336 W. ½ of N. W. ¼; S. E. ¼ of N. W. ¼; N. W. ¼ of S. E. ¼	25	"	"	160	00	1 25	200 00	Nov. 26, '53	Robert Meek	Robert Meek	July 1, '58	4272
S. E. ¼ of S. W. ¼	25	"	"	40	00	1 25	50 00	" 18, "	Robert Meek	Robert Meek	July 1, '58	4172
Lot No. 5	27	"	"	37	54	1 25	46 93	Sept. 12, '53	Frederick Schlicht	Frederick Schlicht	July 1, '58	3781
Lot No. 7	27	"	"	63	00	1 25	78 75	Dec. 17, '53	Norman C. Anerile	Norman C. Anerile	May 31, '59	4397
S. W. ¼ of S. W. ¼	27	"	"	40	00	1 25	50 00	" 10, '53	Frederick Schlicht	Frederick Schlicht	May 31, '59	4360
S. E. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	" 13, '53	Isam C. Hull	Isam C. Hull	May 31, '59	4375
S. W. ¼ of N. E. ¼	35	"	"	40	00	1 25	50 00	" 10, '53	David C. Hull	David C. Hull	May 31, '59	4362
Lots No. 6 & 7, & S. E. ¼ of S. E. ¼	3	86	27	157	35	1 25	196 68¾	Dec. 6, '53	Robert Meek	Robert Meek	May 23, '59	4336
S. E. ¼ of N. E. ¼	15	"	"	40	00	1 25	50 00	Oct. 22, '53	Cha's J. & Uhannah Wolston	Cha's J. & Uhannah Wolston	July 1, '58	3951
N. E. ¼ of S. W. ¼	15	"	"	40	00	1 25	50 00	" "	John Johnson	John Johnson	July 1, '58	3946
Lots Nos. 3 & 4	21	"	"	60	38	1 25	75 47	" 22, "	Joseph Harden	Joseph Harden	July 1, '58	3952
S. W. ¼ of S. W. ¼	23	"	"	40	00	1 25	50 00	" " "	Andrew J. Johnson	Andrew J. Johnson	July 1, '58	3945
S. E. ¼ of N. E. ¼	27	"	"	40	00	1 25	50 00	" " "	Jonas Errickson	Jonas Errickson	July 1, '58	3948
S. E. ¼ of N. E. ¼	27	"	"	40	00	1 25	50 00	" " "	Adolphus Hanson	Adolphus Hanison	Oct. 1, '58	3947
Lot No. 1	27	"	"	31	18	1 35	38 97	" " "	Joseph Harden	Joseph Harden	July 1, '58	3953
N. E. ¼ of N. W. ¼	35	"	"	40	00	1 25	50 00	" " "	John Smeenson	John Smeenson	" " '58	3950
S. E. ¼ of N. W. ¼	35	"	"	40	00	1 25	50 00	" " "	Andrew J. Johnson	Andrew J. Johnson	Oct. 1, '58	3944
N. ½ of S. E. ¼	35	"	"	80	00	1 25	100 00	Dec. 6, '53	Robert Meek	Robert Meek	May 23, '59	4335
S. E. ¼ of S. E. ¼	35	"	"	40	00	1 25	50 00	Oct. 22, '53	Andrew Adamson	Andrew Adamson	July 1, '58	3949
S. ½ of N. E. ¼, and S. ½ of N. W. ¼	1	87	27	160	00	1 25	200 00	Sept. 12, '53	William T. Woolsey	William T. Woolsey	July 1, '58	3787
S. ½ of N. W. ¼	11	"	"	80	00	1 25	100 00	" " "	Jesse Goodrich	Jesse Goodrich	July 1, '58	3788
W. ½ of S. W. ¼	11	"	"	80	00	1 25	100 00	" " "	Daniel Galer	Daniel Galer	July 1, '58	3790
S. W. ¼ of N. W. ¼	15	"	"	40	00	1 25	50 00	Oct. 31, '53	Squire McGuire	Squire McGuire	July 1, '58	4005
S. W. ¼ of S. W. ¼	15	"	"	40	00	1 25	50 00	Sept. 12, '53	Franklin McGure	Franklin McGuire	July 1, '58	3792
Lots No. 7 & 8	15	"	"	102	20	1 25	127 75	" " "	Francis McGure	Francis McGure	July 1, '58	3789
Lot No. 3	23	"	"	49	40	1 25	100 62	Oct. 14, '53	Ludowick Mariele	Ludowick Mariele	July 1, '58	3906
Lot No. 2	23	"	"	29	70	1 25						3906
W. ½ of N. W. ¼	31	88	27	61	92	1 25	50 00	Oct. 17, '53	George E. Cross	George E. Cross	July 1, '58	3915
S. E. ¼ of S. W. ¼	31	"	"	40	00	1 25	50 00	Oct. 31, '53	John Johns	John Johns	July 1, '58	4006
S. W. ¼ of	3	88	28	160	00	1 25	200 00	Dec. 5, '53	Jesse Williams	Jesse Williams	May 32, '59	4313
Lot No. 4	5	88	28	38	43	1 25	48 03	Dec. 23, '53	Seth Richards	Seth Richards		4429
N. ½ of	9	"	"	320	00	1 25	400 00	" 5, "	Jesse Williams	Jesse Williams	May 31, '59	4312
Lots No. 1, 3, 4, 5, 6 & 8	15	"	"	290	13	1 25	362 66¼	Nov. 9, '53	Seth Richards	Seth Richards	July 1, '58	4075
Lot No. 2	15	"	"	64	00	1 25	80 00	Dec. 23, '53	Seth Richards	Seth Richards	July 1, '58	4130
S. E. ¼ of S. E. ¼	15	"	"	40	00	1 25	50 00	Dec. 17, '53	David Leeming	David Leeming	May 31, '59	4396
Lot No. 1, and 2, 9, & 10	17	"	"	143	45	1 25	319 31	Dec. 22, '53	Seth Richards	Seth Richards		4425
Lots No. 6 and 8	17	"	"	112	00	1 25						4425
Lots 3, 4, 5, and 7	17	"	"	95	10	1 25	118 87½	Nov. 9, 53	Seth Richards	Seth Richards	July 1, '58	4076
Lot No. 4	23	"	"	58	88	1 25	73 60	" 2, "	Tho's E. Barger	Tho's E. Barger	July 1, '58	4013
S. W. ¼ of S. W. ¼	23	"	"	40	00	1 25	50 00	" " "	Isaac Garner	Isaac Garner	July 1, '58	4014
S. ½ of S. E. ¼, S. E. ¼ of S. W. ¼	23	"	"	120	00	1 25	150 00	Dec. 12, '53	Seth Richards	Seth Richards	May 31, '59	4364

N. W. ¼ of	25	88	28	160	00	1 25	200 00	Dec.	22, '53	Thomas Weaver	Thomas Weaver	May	31, '59	4410
W. ½ of S. W. ¼	25	"	"	80	00	1 25	100 00	Nov.	" "	David E. Echart	David E. Echart	July	1, '58	4218
Lot No. 1	27	"	"	32	68	1 25	40 75	Dec.	12, '53	Seth Richards	Seth Richards	May	31, '59	4365
E. ½ of N. E. ¼	35	"	"	80	00	1 25	100 00	Sept.	12, '53	John Tolman	John Tolman	July	1, '58	3791
N. W. ¼ of N. W. ¼	17	89	28	40	00	1 25	50 00	Oct.	1, '53	Francis W. Allen	Francis W. Allen	July	1, '58	3842
W. ½ of S. W. ¼, & S. W. ¼ of N. W. ¼	17	"	"	120	00	2 00	240 00	Dec.	5, '53	Jesse Williams	Jesse Williams	M'ch	14, '59	4308
S. E. ¼ of S. W. ¼	17	"	"	40	00	2 00	80 00	May	8, '55	Jesse Williams	Jesse Williams			4434
Lots No. 1 & 2	19	"	"	81	84	1 25	189 30	Jan.	19, '54	James B. Williams	James B. Williams	M'ch	14, '59	4431
Lot No. 3	19	"	"	69	60	1 25								4431
337 Lot No. 4; S. E. ¼ of S. E. ¼, and N. E. ¼ of S. E. ¼	19	"	"	135	40	1 25	169 25	Jan.	19, '54	W'm Williams	W'm Williams	M'ch	14, '59	4432
N. E. ¼ of	19	"	"	160	00	1 25	200 00	"	" "	John Gemp	John Gemp	"	" "	4433
N. ¼ of N. E. ¼	29	"	"	80	00	2 00								
N. W. ¼, & lots 2 & 3	29	"	"	238	21	2 00	636 42	Dec.	5, '53	Jesse Williams	Jesse Williams	M'ch	14, '59	
S. W. ¼ of S. W. ¼	7	90	28	40	15	2 00	80 30	Dec.	'53	Jesse Williams	Jesse Williams	May	3, '59	4311

338 Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa, and whereas disagreements and misunderstandings have arisen, and do now exist between the State of Iowa and said company, and it being conceived to be the interest of all parties concerned to have said matters, and all matters and things between said company and the State of Iowa, settled and adjusted: Now therefore—

Be it resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims, with or against the State, including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa, and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to said company, and also surrender to said State the dredge-boat and its appurtenance, belonging to said improvement, and the State of Iowa shall, by its proper officers, certify and convey to the said company all lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, to the State of Iowa by its officers and agents, prior to the 23rd day of December, 1853, under said grant, and said company or its assignees shall have right to all of said lands as herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges, under and by virtue of said grant, entirely released from any claim, by or through said company; and it is understood that among the lands excepted, and not granted by the State to said company, are 25,487.87 acres, lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa.

And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description, prepared for or intended for the construction of locks or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts by no other liabilities of any name or nature, except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to the date, beyond the percentage retained from the contractors under their agreements, and the said company shall be discharged from all liabilities for the claims of the officers of the State for services or salaries.

The said company hereby agree to pay to the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement, (as fast as he may

require the same to liquidate existing liabilities against the said Des Moines River improvement,) on thirty days' notice given to said company at their office in the city of New York, and any bonds or certificates of indebtedness against said improvement, not exceeding in amount the sum of eleven thousand dollars, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: *Provided*, That no liabilities, assumed by the State in this contract, shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant: *And provided also*, That if Congress shall permit a *devision* [diversion] of the lands of said Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of the liabilities as aforesaid against said improvement, and the completion of such locks and dams on the Des Moines River, as the legislature shall direct, shall be granted to The Keokuk, Fort Des Moines & Minnesota Railroad Company to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said railroad above the city of Des Moines: *And provided further*, That if the said De' Moine' Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state, within sixty days of the passage of this joint resolution, then this contract shall be in force, and bind both of the parties thereto.

(Signed) STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.

(Signed) ORAN FAVILLE,
President of the Senate.

Approved March 2, 1858.

RALPH P. LOWE.

STATE OF IOWA, *ss:*

I, Elijah Sells, secretary of the State of Iowa, hereby certify that the foregoing is a true copy from the original roll on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the great seal of the State of Iowa. Done at Des Moines this 22d day of July, A. D. 1862.

[GREAT SEAL.] ELIJAH SELLS.

The De' Moine' Navigation and Railroad Company accepted the proposition embodied in the joint resolution, within the time specified, in the following manner:

OFFICE OF THE DE' MOINE' NAVIGATION & R. R. CO.
18 *William st., New York, April* 15, 1858.

At a meeting of the board of directors of the De' Moine' Navigation and Railroad Company, held at their office, in the city of New York, on Thursday, the 15th day of April, 1868, [1858,] the following preamble and resolutions were adopted, to wit: Whereas, by joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, the said general assembly did enact as follows, viz: [Here follows copy of the joint resolution of the gen'l assembly.] *Resolved*, That
340 the propositions and conditions of the above-recited joint resolution be, and they are hereby, ratified and accepted by the De' Moine'

Navigation and Railroad Company, and that the president of the company cause a certified copy of this resolution, under the corporate seal, to be filed in the office of the secretary of state of the State of Iowa.

Resolved, That the president be, and he is hereby, authorized to execute, under the corporate seal of the company, the necessary and proper releases and discharges, in conformity with the provisions and conditions of the said joint resolutions of the general assembly of the State of Iowa, and to cause the same to be filed in the office of the secretary of state of the State of Iowa.

I hereby certify that the foregoing is a true copy of the resolutions of the De' Moine' Navigation & Railroad Company, adobted by the board of directors of said company, at a meeting held on the 15th day of April, 1858, and duly recorded upon their book of minutes.

In witness whereof I have hereunto affixed the corporate seal of the said company, together with my signature as its president, and have caused the same to be witnessed by the secretary of the said company.

(Signed) R. S. BURROWS,
President De' Moine' Nav. & R. R. Co.

JAMES C. PATTERSON,
Sec'y De' Moine' Nav. & R. R. Co.

SEC'Y OF STATE OFFICE, *Des Moines, Iowa:*

I hereby certify that the foregoing is a true and correct copy from the original roll on file in my office.

(Signed) ELIJAH SELLS, *Sec. State.*

341 Parts of sections.	Sections.	Township.	Range.	Acres.	100ths.	Date of sale.	To whom sold and patented.	Date of patent.	No. of patent.
S. W. ¼	29	79	22	160	00	May 14, '55.	Des Moines Nav. & R.R. Co.	May 3d, 1858.	9
S. ½ of S. E. ¼	31	"	"	80		"	" " "	"	"
W. ½ of S. W. ¼	33	"	"	80		"	" " "	"	"
S. W. ¼ of S. W. ¼	5	"	23	40		"	" " "	"	"
N. E. ¼ of N. E. ¼	7	"	"	40		"	" " "	"	"
S. W. ¼ of S. E. ¼, & N. E. ¼ of S. W. ¼	17	"	"	80		"	" " "	"	"
N. W. ¼ of N. E. ¼, & S. E. ¼ of N. E ¼	21	"	"	80		"	" " "	"	"
S. W. ¼ of S. W. ¼, & lot "7"	5	"	24	66	75	"	" " "	"	"
Lot 3	21	"	"	20	30	"	" " "	"	"
N. E. ¼ of N. E. ¼	23	"	"	40		"	" " "	"	"
N. ½ of N. W. ¼; S. W. ¼ of N. E. ¼, & N. W. ¼ of S. E. ¼	25	"	"	160		"	" " "	"	"
N. W. f'l ¼ of N. W. f'l ¼, & S. E. ¼ of S. W. f'l ¼	31	80	23	88	66	"	" " "	"	"
All of	3	"	24	640		"	" " "	"	"
All of	11	"	"	640		"	" " "	"	"
N. ½, & S. E. ¼	9	"	"	480		"	" " "	"	"
W. ½; and W. ½ of S. E. ¼; & S. W. ¼ of N. E. ¼	13	"	"	440		"	" " "	"	"
N. E. ¼	15	"	"	160		"	" " "	"	"
W. ½ of N. E. ¼, & S. E. ¼ of N. E. ¼	17	"	"	120		"	" " "	"	"
N. E. ¼; and E. ½ of N. W. ¼; & N. W. ¼ of N. W. ¼; and E. ½ of S. W. ¼; & W. ½ S. E. ¼	23	80	24	440		"	" " "	"	"
S. E. ¼	25	"	"	160		"	" " "	"	"
N. ½ N. W. ¼, and S. E. ¼ S. W. ¼	27	"	"	120		"	" " "	"	"
Lot "1"	29	"	"	9	41	"	" " "	"	"
E. ½ S. E. ¼; & S. ½ N. E. ¼, & lots 1, 5, & 7	3	"	25	285	17	"	" " "	"	"
S. ½ N. E. f'l ¼; & N. W. f'l ¼ of N. E. f'l ¼; and W. ½ S. W. ¼; & N. f'l ½ of N. W. f'l ¼, S. W. ¼ N. W.¼	5	"	"	356	93	"	" " "	"	"
All of	7	"	"	652		"	" " "	"	"
W. ½ of S. E. ¼	9	"	"	80		"	" " "	"	"
Lots 4, 5, & 7	11	"	"	133	80	"	" " "	"	"
W. ½ S. W. ¼; & N. E. ¼ S. W. ¼, & S. E. ¼ S. E. ¼	15	"	"	160		"	" " "	"	"
E. ½ S. E. ¼; & E. ½ N. E. ¼; & N. W. ¼ N. E. ¼; & N. ¼ of N. W. ¼; and S.W. ¼ of S W. ¼	17	"	"	320		"	" " "	"	"
All of	19	"	"	653	04	"	" " "	"	"
S. ½; and W. ½ N. E. ¼; & S. W. ¼ N. W. ¼	21	"	"	440		"	" " "	"	"
W. ½ N. W ¼ & N. W. ¼ S. W. ¼	23	"	"	120		"	" " "	"	"
S. W. ¼ of S. E. ¼	25	"	"	40		"	" " "	"	"
N. W. ¼; and S. ½ S. W. ¼; and W. ½ S. E. ¼, and S. W. ¼ N. E. ¼	27	"	"	360		"	" " "	"	"
E. ½ N. E. ¼; & N. W. ¼ N. E. ¼; & W. ¼ N.W. ¼, & N. E. ¼ N. W. ¼; & S. ½ S. W. ¼	29	"	"	320		"	" " "	"	"
N. E. ¼, & E. ½ N. W. f'l ¼; & N. E. ¼ S. E. ¼	31	80	25	280	00	May 14, '55.	Des Moines Nav. & R. R. Co.	May 3, 1858.	9
N. E. ¼, and W. ½ S. W. ¼	33	"	"	240	----	"	" " "	"	"
S. W. ¼; and W. ½ S. E. ¼, & W. ½ N. E. ¼	35	"	"	320	----	"	" " "	"	"
W. ½ S. W. ¼, and S. E. ¼ S. W. ¼	7	81	24	127	32	"	" " "	"	"
All of	19	"	"	642	08	"	" " "	"	"
S. W. ¼ of S. W ¼	21	"	"	40	----	"	" " "	"	"
W. ½ of S. W. ¼	27	"	"	80	----	"	" " "	"	"
All of	29	"	"	640	----	"	" " "	"	"
342 S. E. ¼	31	81	24	160	----	"	" " "	"	"

Parts of section.	Section.	Township.	Range.	Acres.	100ths	Date of sale.	To whom sold and patented.	Date of patent.	No. of patent.
All of	33	"	"	640	....	"	" "	"	"
E. ½	3	"	25	309	49	"	" "	"	"
S. W. fl ¼; & N. E. ¼ & S. ½ N. W. fl ¼	7	"	"	425	62	"	" "	"	"
E. ½ N. E. ¼, & S. W. ¼ of S. W. ¼	9	"	"	120	....	"	" "	"	"
N. E. ¼	11	"	"	160	....	"	" "	"	"
N. E. ¼	13	"	"	160	....	"	" "	"	"
E. ½ N. W. ¼; & N. W. ¼ N. W. ¼; & N. W. ¼ S. W. ¼	15	"	"	160	....	"	" "	"	"
W. ½ N. W. ¼; & S. E. ¼ N. W. ¼; & S. W. ¼ S. W. ¼, and N. E. ¼ S. W. ¼, & N. W. ¼ S. E. ¼	17	"	"	240	....	"	" "	"	"
N. W. ¼ of N. E. ¼	21	"	"	40	....	"	" "	"	"
N. ½ of N. E. ¼	21	"	"	80	....	"	" "	"	"
E. ½ N. E. ¼; & N. W. ¼ N. E. ¼; and E. ½ S. E. ¼; and S. W. ¼ S. E. ¼	25	"	"	240	....	"	" "	"	"
S. W. ¼ and S. ½ S. E. ¼	31	"	"	257	75	"	" "	"	"
Lots 7, 8, 9, and 13	33	"	"	138	04	"	" "	"	"
All of	1	80	26	698	18	"	" "	"	10
N. fl ½, and S. E. ¼, and N. E. ¼ S. W. ¼	5	"	"	578	78	"	" "	"	"
All of	3	"	"	701	92	"	" "	"	"
E. ½, and N. W. ¼, and E. ½ S. W. ¼	9	"	"	560	....	"	" "	"	"
W. ½; & S. ½ N. E. ¼; & E. ½ S. E. ¼, & S. W. ¼ S. E. ¼	11	"	"	520	....	"	" "	"	"
E. ½, & S. W. ¼, & E. ½ N. W. ¼	13	"	"	560	....	"	" "	"	"
N. ½, & N. ½ S. E. ¼	15	"	"	400	....	"	" "	"	"
N. E. ¼ of N. E. ¼	23	80	26	40	....	"	" "	"	"
N. E. ½; & N. E. ¼ N. W. ¼, & E. ½ S. E. ¼	25	"	"	280	....	"	" "	"	"
S. E. ¼ of S. E. ¼	1	81	"	40	....	"	" "	"	"
N. W. ¼ of S. W. ¼	3	"	"	40	....	"	" "	"	"
S. W. ¼ of N. W. ¼	5	"	"	40	....	"	" "	"	"
All of	7	"	"	612	08	"	" "	"	"
S. W. ¼ S. W. ¼, and S. E. ¼ S. E. ¼	9	"	"	80	....	"	" "	"	"
N. W. ¼ N. E. ¼, and lot "1"	13	"	"	49	35	"	" "	"	"
S. ½ of N. E. ¼	15	"	"	80	....	"	" "	"	"
All of	17	81	26	640	00	May 14, '55.	Des Moines Nav. & R. R. Co.	May 3, 1858.	"
All of	19	"	"	612	....	"	" "	"	10
S. ½ of	21	"	"	320	....	"	" "	"	"
S. W. ¼; and W. ½ N. W. ¼; & S. ½ S. E. ¼	27	"	"	320	....	"	" "	"	"
All of	29	"	"	640	....	"	" "	"	"
N. E. ¼; and N. E. ¼ N. W. fl ¼; and E. ½ S. E. ¼, & N. W. ½ S. E. ¼	31	"	"	320	....	"	" "	"	"
All of	33	"	"	640	....	"	" "	"	"
W. ½; and S. E. ¼; & E. ½ N. E. ¼, & S. W. ¼ N. E. ¼	35	"	"	600	....	"	" "	"	"
All of	1	81	27	593	64	"	" "	"	"
N. E. ¼, and E. ½ S. E. ¼	11	"	"	240	....	"	" "	"	"
E. ½; and N. W. ¼, and E. ½ S. W. ¼	13	"	"	560	....	"	" "	"	"
E. ½ of N. E. ¼	25	"	"	80	....	"	" "	"	"
All of	5	82	25	635	18	"	" "	"	"
All of	7	"	"	656	86	"	" "	"	11
All of	17	"	"	640	....	"	" "	"	"
All of	29	"	"	640	....	"	" "	"	"
All of	31	"	"	663	10	"	" "	"	"

All of	33	"	"	640	....	"	"	"	"	"	"
W. ½ N. W. ¼, & W. ½ S. W. ¼; & S. E. ¼ S. W. ¼	9	82	25	200	....	"	"	"	"	"	"
W. ½; & W. ½ N. E. ¼; & S. E. ¼ N. E. ¼; & W ½ S. E. ¼; & N. E. ¼ S. E. ¼	21	"	"	560	....	"	"	"	"	"	"
W. ½ S. W. ¼; & S. W. ¼ N. W. ¼	27	"	"	120	....	"	"	"	"	"	"
N. E. ¼ S. E. ¼; & S. W. ¼ S. E. ¼; & N. W. ¼ S. W. ¼	1	"	26	120	....	"	"	"	"	"	"
343 S. E. ¼ N. W. ¼; & N. E. ¼ S. E. ¼; & W. ½ S. W. ¼; & S. W. ¼ N. W. ¼	3	"	"	200	....	"	"	"	"	"	"
N. E. f'l N. W. f'l ¼; & S. W. ¼ N. W. ¼; and lots 5, 6, 7, & 8	5	"	"	202	97	"	"	"	"	"	"
W. ½; & S. ½ N. E. ¼	7	"	"	360	....	"	"	"	"	"	"
N. W. ¼ S. W. ¼; and lots 1, 2, 4, & 6	9	"	"	155	16	"	"	"	"	"	"
S. E. ¼ N. W. ¼; & S. W. ¼ S. E. ¼; & N. E. ¼ N. E. ¼	11	"	"	120	....	"	"	"	"	"	"
E. ½; & E. ½ N. W. ¼; & S. E. ¼; S. W. ¼	13	"	"	440	....	"	"	"	"	"	"
Lots 1, 2, 3, 4, & 8	15	"	"	234	09	"	"	"	"	"	"
W. ½ N. W. ¼; & S. E. ¼ N. W. ¼; & S. E. ¼ S. E. ¼	17	"	"	160	....	"	"	"	"	"	"
S. ½; & E. ½ N. E. ¼; & W. ¼ N. W. ¼; & N. E. ¼ N. W. ¼	19	"	"	493	24	"	"	"	"	"	"
E. ½ N. E. ¼; & S. W. ¼ N. E. ¼; & S. ½ S. W. ¼; & N. W. ¼ N. W. ¼	21	"	"	240	....	"	"	"	"	"	"
E. ½ N. E. ¼; & S. E. ¼ S. E. ¼; & E. ½ N. W. ¼	23	"	"	200	....	"	"	"	"	"	"
S. W. ¼ N. W. ¼; & N. W. ¼ S. W. ¼; and lot "4"	27	"	"	100	35	"	"	"	"	"	"
N. W. ¼; & W. ½ N. E. ¼; & N. E. ¼ N. E. ¼; & S. ½ S. E. ¼; & E. ½ S. W. ¼; & S. W. ¼ S. W. ¼	29	82	26	480	00	May 14, '55	Des Moines Nav. & R. R. Co.		May 3, 1858	11	
W. f'l ½; and W. ½ S. E. ¼; N. E. ¼	31	"	"	541	60	"	"	"	"	"	"
S. W. ¼; & S. ½ N. E. ¼; & N. W. ¼ S. E. ¼	33	"	"	280	....	"	"	"	"	"	"
All of	1	"	27	533	42	"	"	"	"	"	"
All of	13	"	"	640	....	"	"	"	"	"	"
E. ½, and S. W. ¼	25	"	"	480	....	"	"	"	"	"	"
E. ½ S. W. ¼; & S. W. ¼ S. E. ¼	33	79	22	120	....	May 6, '56	"	"	"	9	
N. ½ N. W. ¼	21	"	23	80	....	"	"	"	"	"	"
N. f'l ½ of	1	"	25	364	80	"	"	"	"	"	"
All of	3	"	"	681	70	"	"	"	"	"	"
N. f'l ½ N. E. ¼	5	"	"	99	91	"	"	"	"	"	"
E. ½; & E. ½ S. W. ¼; & E. ½ N. W. ¼; & N. W. ¼ N. W. ¼	9	"	"	520	....	"	"	"	"	"	"
All of	11	"	"	640	....	"	"	"	"	"	"
N. E. ¼ N. E. ¼; & E. ½ S. W. ¼	13	"	"	120	....	"	"	"	"	"	"
All of	15	"	"	640	....	"	"	"	"	"	"
E. ½ N. E. ¼; & E. ½ S. E. ¼	21	"	"	160	....	"	"	"	"	"	"
N. ½ S. E. ¼; & S. E. ¼ S. E. ¼; & N. E. ¼ S. W. ¼	9	81	25	160	....	"	"	"	"	"	"
All of	3	82	27	639	68	"	"	"	"	11	
N. E. ¼, and E. ½ S. E. ¼	9	"	"	240	...	"	"	"	"	"	"
All of	11	"	"	640	....	"	"	"	"	"	"
All of	15	"	"	640	....	"	"	"	"	"	"
All of	23	"	"	640	....	"	"	"	"	"	"
N. E. ¼ N. E. ¼	27	"	"	40	....	"	"	"	"	"	"
N. W. ¼	25	"	"	160	....	"	"	"	"	"	"
E. ½; & E. ½ S. W. ¼; & E. ¼ N. W. ¼	35	"	"	480	...	"	"	"	"	"	"
W. ½ N. E. ¼; & W. ½ S. E. ¼; & W. ½	7	83	25	467	98	"	"	"	"	"	"
All of	19	"	"	653	08	"	"	"	"	"	"
S. W. ¼; & W. ½ N. W. ¼	29	"	"	240	....	"	"	"	"	"	"
All of	31	"	"	665	52	"	"	"	"	"	"
E. ½ N. E. ¼; & E. ½ S. E. ¼	1	83	26	130	40	"	"	"	"	"	"
S. W. ¼ S. E. ¼	5	"	"	40	....	"	"	"	"	"	"
N. E. ¼ N. E. ¼; & S. ½ N. E. ¼ N. E. ¼; and S. E. ¼; & S. ½ S. E. ¼	11	"	"	240	....	"	"	"	"	"	"
344 All of	13	"	"	640	....	"	"	"	"	"	"
S. ½ N. W. ¼	15	"	"	80	....	"	"	"	"	"	"
S. E. ¼ N. E. ¼; & N. E. ¼ N. W. ¼, and lots 1, 3, 4, 6, and 7	17	"	"	294	43	"	"	"	"	"	"

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Date of sale.	To whom sold & patented	Date of patent.	No. of patent.
S. f'l ¼ of	19	"	"	308	24	"	" "	"	"
N. E. ¼ S. W. ¼; & E. ½ N. W. ¼, & lot "1"	21	"	"	155	10	"	" "	"	"
N. E. ¼ N. E. ¼	23	"	"	40	....	"	" "	"	"
S. W. ¼ S. W. ¼; & W. ½ N. W. ¼ & lots 1, 2, 3, 5, 6, & 7	29	83	26	320	45	May 6, '56	Des Moines Nav. & R. R. Co.	May 8, 1858,	11
E. ½; and S. W. ¼; & S. W. ¼ N. W. ¼	25	"	"	520	....	"	" "	"	"
N. E. ¼ N. E. ¼	27	"	"	40	....	"	" "	"	"
N. W. ¼ S. E. ¼; & S. W. f'l ½; & W. f'l ½ N. W. ¼	31	"	"	260	....	"	" "	"	"
W. ½ N. E. ¼; & N. W. ¼ S. W. ¼, & lots 1, 3, 4, 5, & 7	33	"	"	259	12	"	" "	"	"
Lots 5 & 6	1	83	27	68	10	"	" "	"	"
All of	3	"	"	528	04	"	" "	"	"
All of	5	"	"	525	24	"	" "	"	"
All of	7	"	"	645	08	"	" "	"	"
All of	9	"	"	640	....	"	" "	"	"
All of	11	"	"	280	....	"	" "	"	"
N. ½ N. E. ¼; & S. E. ¼ S. E ¼; & S. W. ¼	13	"	"	520	....	"	" "	"	"
N. ½ N. E. ¼; & S. E. ¼ N. E. ¼; & S. ½ S. W. ¼; & N. W. ¼	15	"	"	640	....	"	" "	"	"
All of	17	"	"	640	....	"	" "	"	"
All of	21	"	"	640	....	"	" "	"	"
All of	23	"	"	640	....	"	" "	"	"
All of	25	"	"	360	....	"	" "	"	"
N. W. ¼ N. E. ¼; & S. ½ N. E. ¼; & S. E. ¼; & S. ½ S. W. ¼	27	"	"	640	....	"	" "	"	"
All of	33	"	"	320	....	"	" "	"	"
E. ½ of	35	"	"	640	....	"	" "	"	"
All of	1	83	28	352	25	"	" "	"	"
E. f'l ½; & N. E. ¼ S. W. ¼; & E. f'l ½ N. W. ¼	31	84	25	42	48	"	" "	"	"
S. W. f'l ¼ S. W. f'l ¼	3	"	26	713	70	"	" "	"	"
All of	5	"	"	120	....	"	" "	"	"
S. ½ S. E. ¼; & S. W. ¼ N. W. ¼	7	84	26	403	01	"	" "	"	"
S. W. ¼ N. E. ¼, & N. ½ S. E. ¼; & S. W. ¼ S. E. ¼; & E. ½ S. W. ¼; & S. E. ¼ N. W. ¼, & lots 1, 2, 3, 4, & 5	9	"	"	120	....	"	" "	"	"
S. E. ¼ N. W. ¼; & N. ½ N. W. ¼	11	"	"	640	....	"	" "	"	"
All of	15	"	"	320	....	"	" "	"	"
E. ½ of	17	"	"	40	....	"	" "	"	"
N. W. ¼ N. E. ¼	19	"	"	40	....	"	" "	"	"
N. W. ¼ N. E. ¼	23	"	"	200	....	"	" "	"	"
N. ½ N. E. ¼; & S. W. ¼ N. E. ¼; & N. ½ N. W. ¼	25	"	"	80	....	"	" "	"	"
W. ½ S. W. ¼	31	"	"	324	10	"	" "	"	"
S. W. ¼ N. E. ¼; & N. ½ S. E. ¼; S. W. ¼ S. E. ¼; & N. f'l ½ & N. W. ¼; & lots 2 & 3	33	"	"	80	....	"	" "	"	"
W. ½ S. W. ¼	35	84	26	400	00	May 6, '56	Des Moines Nav. & R. R. Co.	May 3, 1858.	11
N. E. ¼; & N. ½ S. E. ¼; & N. E. ¼ S. W. ¼; & S. E. ¼ N. W. ¼; & N. ½ N. W. ¼	1	"	27	524	23	"	" "	"	"
S. W. ¼, & W. f'l ½ N. W. ¼, and lots 4, 5, 6, 7, and "8"	3	"	"	670	78	"	" "	"	"
N. f'l ½ & S. E. ¼; & S. W. ¼ S. W. ¼; & N. ½ S. W. ¼	5	"	"	706	24	"	" "	"	"
All of	7	"	"	634	84	"	" "	"	"
All of	9	"	"	640	....	"	" "	"	"
All of W. ½ N. E. ¼; & S. ½ S. E. ¼; & N. W. ¼ S. E. ¼; & S. ½ S. W. ¼; N. ½ N. W. ¼ & S. W. ¼ N.									

W. ½											
N. W. ¼ N. W. ¼	11	"	"	400	....	"	"	"	"	"	"
N. ½ & N. ½ S. E. ¼ & S. W. ¼ S. E. ¼; & N. ½ S. W. ¼; & S. W. ¼ S. W. ¼	13	"	"	40	....	"	"	"	"	"	"
All of	15	"	"	560	....	"	"	"	"	"	"
345 All of	17	"	"	640	....	"	"	"	"	"	"
N. ½ N. E. ¼; & S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼; & S. ½ S. E. ¼; & S. E. ¼ S. W. ¼; & N. ½ S. W. ¼; & N. W. ¼	19	"	"	643	84	"	"	"	"	"	"
Lot "8"	21	"	"	520	....	"	"	"	"	"	"
S. E. ¼ S. E. ¼; & N. W. ¼ S. W. ¼, & lots 1 & 3	23	"	"	21	16	"	"	"	"	"	"
W. ½ N. E. ¼; & W. ½ S. E. ¼; and S. W. ¼; & S. ½ N. W. ¼, & N. W. ¼ N. W. ¼	25	"	"	158	04	"	"	"	"	"	"
All of	27	"	"	440	....	"	"	"	"	"	"
All of	29	"	"	640	....	"	"	"	"	"	"
All of	31	"	"	645	20	"	"	"	"	"	"
S. W. ¼; & S. W. ¼ N. W. ¼, & lots 4, 5, 6, & 7	33	"	"	640	....	"	"	"	"	"	"
All of	35	"	"	337	97	"	"	"	"	"	"
E. ½ N. E. ¼	1	84	28	696	26	"	"	"	"	"	"
E. ½; & E. ½ S. W. ¼, & E. ½ N. W. ¼	11	"	"	80	....	"	"	"	"	"	"
All of	13	"	"	480	....	"	"	"	"	"	"
S. W. ¼; & S. ½ N. W. ¼, & N. W. ¼ N. W. ¼	25	"	"	640	....	"	"	"	"	"	"
All of	3	85	26	277	28	"	"	"	"	"	"
All of	5	"	"	629	54	"	"	"	"	"	"
All of	7	"	"	611	98	"	"	"	"	"	"
N. W. ¼ S. E. ¼; & S. ½ S. E. ¼; & S. W. ¼ N. E. ¼, & W. ½	9	"	"	640	....	"	"	"	"	"	"
N. ½; S. E. ¼; & S. E. ¼ S. W. ¼; & N. ½ S. W. ¼	15	"	"	480	....	"	"	"	"	"	"
W. ½ N. E. ¼; & W. ½ S. E. ¼; & S. W. fl ¼, & W. fl ½ N. W. ¼	17	"	"	600	....	"	"	"	"	"	"
All of	19	"	"	376	30	"	"	"	"	"	"
S. W. ¼, & W. ½ N. W. ¼	21	"	"	640	....	"	"	"	"	"	"
All of	23	"	"	240	....	"	"	"	"	"	"
S. ½ S. W. ¼, & N. W. ¼ S. W. ¼	27	"	"	640	....	"	"	"	"	"	"
N. E. ¼ N. E. ¼; & N. ½ S. E. ¼; and N. E. ¼ S. W. ¼; and W. ½ S. W. ¼, & N. E. ¼ N. W. ¼	29	"	"	120	....	"	"	"	"	"	"
N. E. ¼ S. E. ¼; & S. W. ¼ S. W. ¼, & N. W. ¼ N. W. ¼	31	85	26	269	62	May 6, 1856	Des Moines Nav. & R. R. Co.		May 3, 1858,	11	"
W. ½ N. E. ¼; & W. ¼ S. E. ¼, & W. ½ S. W. ¼	33	"	"	120	....	"	"	"	"	"	"
N. fl ½; & W. ½ S. E. ¼, & W. ½ S. W. ¼	35	"	"	480	28	"	"	"	"	"	"
N. E. fl ¼ N. E. ¼; & S. W. ¼ S. W. ¼, & lots 1, 2, 3, 4, 5, 6, & 8	1	"	27	467	58	"	"	"	"	"	"
All of	3	"	"	402	94	"	"	"	"	"	"
All of	5	"	"	643	58	"	"	"	"	"	"
N. W. ¼ N. E. ¼; & S. ½ N. E. ¼, & S. ½; N. W. ¼	7	"	"	638	60	"	"	"	"	"	"
E. ½ N. E. ¼; & E. ½ S. E. ¼, & lots 1, 2, & 4	9	"	"	600	....	"	"	"	"	"	"
E. ½ S. E. ¼; & S. W. ¼ S. E. ¼, & W. ½	11	"	"	317	33	"	"	"	"	"	"
W. ½ S. E. ¼; & S. W. ¼; & S. E. ¼ N. W. ¼, & W. ½ N. W. ¼ and lots 1, 3, & 4	13	"	"	440	....	"	"	"	"	"	"
All of	15	"	"	525	51	"	"	"	"	"	"
All of	17	"	"	640	....	"	"	"	"	"	"
All of	19	"	"	644	80	"	"	"	"	"	"
W. ½ N. E. ¼; & S. ½; and S. E. ¼ N. W. ¼, & lots 1, 2, & 3	21	"	"	640	....	"	"	"	"	"	"
N. W. ¼ N. E. ¼; & S. ½ N. E. ¼; & N. E. ¼ S. E. ¼; & S. ½ S. E. ¼; & S. W. ¼ S. W. ¼, & N. ½ S. W. ¼	23	"	"	537	57	"	"	"	"	"	"
S. E. ¼ S. E. ¼; & N. W. ¼ S. W. ¼; & N. E. ¼ N. W. ¼; & W. ½ N. W. ¼, & lots 1, 2, 3, 4, 6, & 8	25	"	"	360	....	"	"	"	"	"	"
All of	27	"	"	456	76	"	"	"	"	"	"
346 All of	29	"	"	640	....	"	"	"	"	"	"
All of	31	"	"	645	40	"	"	"	"	"	"
N. ½ N. E. ¼; & N. W. ¼ S. E. ¼; & W. ½, & lots 1, 2, & 3	33	"	"	640	....	"	"	"	"	"	"
All of	35	"	"	541	60	"	"	"	"	"	"
	1	85	28	645	60	"	"	"	"	"	"

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Date of sale.	To whom sold & patented.	Date of patent.	No. of patent.
E. ½ of	11	"	"	320	....	"	" "	"	"
All of	13	"	"	640	....	"	" "	"	"
E. ½ N. E. ¼; & E. ½ S. E. ¼, & S. W. ¼ S. E. ¼	23	"	"	200	....	"	" "	"	"
All of	25	"	"	640	....	"	" "	"	"
E. ½ of	35	"	"	320	....	"	" "	"	12
All of	3	86	26	625	92	"	" "	"	"
All of	5	"	"	624	86	"	" "	"	"
All of	7	"	"	606	82	"	" "	"	"
All of	9	"	"	640	....	"	" "	"	"
N. ½ N. E. ¼; & S. W. ¼ N. E. ¼; & W. ½ S. E. ¼ & W. ½	11	"	"	520	....	"	" "	"	"
All of	15	"	"	640	00	"	" "	"	"
All of	17	86	26	640	00	May 6, '56	Des Moines Nav. & R. R. Co.	May 3, '58	"
All of	19	"	"	607	76	"	" "	"	11
All of	21	"	"	640	....	"	" "	"	"
All of	29	"	"	640	....	"	" "	"	"
All of	31	"	"	607	84	"	" "	"	"
All of	33	"	"	640	....	"	" "	"	"
All of	1	"	27	567	95	"	" "	"	"
Lots 1, 2, 3, 4, & 5, & N. W. ¼ S. W. ¼; & N. W. f'l ¼, and N. W. ¼ N. E. ¼	3	"	"	417	....	"	" "	"	13
All of	5	"	"	627	11	"	" "	"	"
All of	7	"	"	629	58	"	" "	"	"
All of	9	"	"	640	60	"	" "	"	"
All of	11	"	"	640	....	"	" "	"	"
All of	13	"	"	640	....	"	" "	"	"
N. ½ N. E ¼; & S. W. ¼ N. E. ¼; & S. E. ¼; and S. ½ S. W. ¼; & S. E. ¼ N. W. ¼; and lots 1, 2, & 3, & N. W. ¼ S. W. ¼	15	"	"	55)	65	"	" "	"	"
All of	17	"	"	640	....	"	" "	"	"
All of	19	"	"	632	60	"	" "	"	"
Lots 1, 2, 5, 6, 7, & 8; & S. E. ¼ S. W. ¼; & W. ½ S. W. ¼, & N. W. ¼	21	"	"	536	50	"	" "	"	"
N. ½; S. E. ¼; & S. E. ¼ S. W. ¼, N. ½ S. W. ¼	23	"	"	600	....	"	" "	"	"
All of	25	"	"	640	....	"	" "	"	"
N. W. ¼ N. E. ¼ & N. E. ¼ S. E. ¼; W. ½ S. W. ¼, lots 2, 3, 4, 5, 6, 7, and 8	27	"	"	479	98	"	" "	"	"
All of	29	"	"	640	....	"	" "	"	"
All of	31	"	"	634	72	"	" "	"	"
All of	33	"	"	640	....	"	" "	"	"
N. E. ¼; & S. W. ¼ S. E. ¼; & S. W. ¼; & W. ½ N. W. ¼	35	"	"	440	....	"	" "	"	"
All of	1	"	28	627	88	"	" "	"	"
N. ½; & S. E. ¼, & N. E. ¼ S. W. ¼	3	"	"	503	02	"	" "	"	"
All of	11	"	"	640	....	"	" "	"	"
All of	13	"	"	640	....	"	" "	"	"
E. ½ N. E. ¼, & E. ½ S. E. ¼	15	"	"	160	....	"	" "	"	"
All of	23	"	"	640	....	"	" "	"	"
All of	25	"	"	640	....	"	" "	"	"
E ½ N. E. ¼, and E. ½ S. E. ¼	27	"	"	160	....	"	" "	"	"
All of	35	"	"	640	....	"	" "	"	"
All of	5	87	26	663	98	"	" "	"	"

All of	7	87	26	597	92	May	6, '56	Des Moines Nav. & R. R. Co.	May	3, '58	"
N. ½; & N. ½ S. E ¼, & S. W. ¼	9	"	"	560	....	"	"	"	"	"	"
347 N. ½ N. E. ¼; & S. W. ¼ N. E. ¼; & S. ½; & N. ½ N. W. ¼, & S. W. ¼ N. W. ¼	15	"	"	560	....	"	"	"	"	"	21
N. E. ¼ N. E. ¼; & S. ½ N. E. ¼, and N. ½ S. E. ¼; & S.W. ¼ S. W. ¼; and N. E. ¼ S.W. ¼, & E. ½ N. W. ¼	17	"	"	360	....	"	"	"	"	"	"
All of	19	"	"	609	18	"	"	"	"	"	"
N. ½, & S. E. ¼; & S. W. ¼ S. W. ¼, & N. ¼ S. W. ¼	21	"	"	600	....	"	"	"	"	"	"
W. ½ S. E. ¼; & W. ½	23	"	"	400	....	"	"	"	"	"	"
All of	27	"	"	640	....	"	"	"	"	"	"
N. ½; S. E. ¼; & S. E. ¼ S. W. ¼, & N. ½ S. W. ¼	29	"	"	600	....	"	"	"	"	"	"
All of	31	"	"	605	92	"	"	"	"	"	"
All of	33	"	"	640	....	"	"	"	"	"	"
All of	35	"	"	640	....	"	"	"	"	"	13
N. ½ N. E. ¼; & S. ½; & N. ½ N. W. ¼	1	87	27	506	44	"	"	"	"	"	"
All of	3	"	"	673	90	"	"	"	"	"	"
All of	5	"	"	681	60	"	"	"	"	"	"
All of	7	"	"	604	30	"	"	"	"	"	"
All of	9	"	"	640	....	"	"	"	"	"	"
All of	11	"	"	480	....	"	"	"	"	"	"
E. ½; & E. ½ S. W. ¼, & N. ½ N. W. ¼	13	"	"	620	....	"	"	"	"	"	"
All of	15	"	"	404	50	"	"	"	"	"	"
E. ½ N. E. ¼; & N. W. ¼ S. W. ¼, & lots 1, 2, 3, 4, 5, & 6	17	"	"	611	25	"	"	"	"	"	"
All of	19	"	"	618	40	"	"	"	"	"	"
All of	21	"	"	587	82	"	"	"	"	"	"
All of	23	"	"	517	40	"	"	"	"	"	"
N. E. ¼; & E. ½ S. E. ¼; & S. W. ¼ S. W. ¼; N. E. ¼ N. W. ¼, & lots 1, 4, 5, 6, 7, & 8	25	"	"	604	25	"	"	"	"	"	"
All of	27	"	"	640	....	"	"	"	"	"	"
All of	29	"	"	640	..	"	"	"	"	"	"
All of	31	"	"	626	44	"	"	"	"	"	"
All of	33	"	"	640	....	"	"	"	"	"	"
All of	35	"	"	640	....	"	"	"	"	"	"
All of	1	87	28	529	23	"	"	"	"	"	"
N. E. ¼ N. E. ¼; & W. ½ S. W. ¼, & lots 1, 2, 3, 4, 5, 6, 7, 9, & 10	3	"	"	678	28	"	"	"	"	"	"
All of	5	"	"	673	98	"	"	"	"	"	"
All of	7	"	"	621	98	"	"	"	"	"	"
All of	9	87	28	640	00	May	6, '56	Des Moines Nav. & R. R. Co.	May	3, '58	13
All of	11	"	"	640	....	"	"	"	"	"	"
All of	13	"	"	640	....	"	"	"	"	"	"
All of	15	"	"	640	....	"	"	"	"	"	"
All of	17	"	"	640	....	"	"	"	"	"	"
All of	21	"	"	640	....	"	"	"	"	"	"
All of	23	"	"	640	....	"	"	"	"	"	"
All of	25	"	"	640	....	"	"	"	"	"	"
All of	27	"	"	640	....	"	"	"	"	"	"
All of	29	"	"	160	....	"	"	"	"	"	"
N. W. ¼ N. E. ¼; & S. ½ N. E. ¼, & N. E. ¼ S. E. ¼	33	"	"	320	....	"	"	"	"	"	"
N. E. ¼; and N. ½ S. E. ¼; and S. E. ¼ S. E. ¼; N. E. ¼ N. W. ¼	35	"	"	640	....	"	"	"	"	"	12
All of	29	88	26	40	....	"	"	"	"	"	"
348 S. W. of S. W. ¼	31	"	"	580	68	"	"	"	"	"	13
All of	3	"	27	120	....	"	"	"	"	"	"
W. ½ S. W. ¼, & S. W. ¼ N. W. ¼	5	"	"	701	30	"	"	"	"	"	"
All of	7	"	"	598	86	"	"	"	"	"	"
All of											

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Date of sale.	To whom sold & patented.	Date of patent.	No. of pa'ents.
All of	9	"	"	640	....	"	" "	"	"
W. ½ N. E. ¼, & W. ½ S. E. ¼, & W. ½	15	"	"	480	....	"	" "	"	"
All of	17	"	"	640	....	"	" "	"	"
All of	19	"	"	599	10	"	" "	"	"
S. ½ N. E. ¼; & S. ½ & S. ½ N. W. ¼	21	"	"	640	....	"	" "	"	"
All of	23	"	"	480	....	"	" "	"	"
All of	25	"	"	640	....	"	" "	"	"
All of	27	"	"	640	....	"	" "	"	"
E. ½; & N. E. ¼ S. W. ¼; and W. ½ S. W. ¼; & E. ½ N. W. ¼	29	"	"	640	....	"	" "	"	"
All of	31	"	"	503	36	"	" "	"	"
All of	33	"	"	640	....	"	" "	"	"
All of	35	"	"	640	....	"	" "	"	"
W. ½; and E. ½ S. E. ¼; & N. W. ¼ S. E. ¼, & lots 1, 2, & 3	1	88	28	709	10	"	" "	"	"
All of	5	"	"	653	88	"	" "	"	"
S. ½ of	7	"	"	628	....	"	" "	"	"
S. W. ¼ S. E. ¼; & S. ½ S. W. ¼; and N. W. ¼ N. W. ¼, and lot 7	9	"	"	320	....	"	" "	"	"
N. E. ¼; & W. ½, & S. W. ¼	15	"	"	205	55	"	" "	"	"
Lots 1, 2, 3, 5, & 7; & S. E. ¼ N. E. ¼, & N. ½ S. E. ¼	17	"	"	240	....	"	" "	"	"
All of	23	"	"	342	04	"	" "	"	"
N. E. fr. ¼ of N. E. ¼	1	87	29						
N. ½ of S. E. ¼	3	"	"	712	58	May 6, '56	Des Moines Nav. & R. R. Co.	May 3, '58	14
All of	3	88	28			"	" "	"	"
All of	11	"	"			"	" "	"	"
All of	13	"	"			"	" "	"	"
All of	19	"	"			"	" "	"	"
Lot "6"	21	"	"			"	" "	"	"
E. ½ & E. ½ S. W. ¼	23	"	"			"	" "	"	"
S. ½ & S ½ N. W. ¼	25	"	"	6,546	59	"	" "	"	"
N. W. ¼ N. W. ¼, & lots 2, 3, & 4	27	"	"			"	" "	"	"
All of	27	"	"			"	" "	"	"
All of	29	"	"			"	" "	"	"
All of	31	"	"			"	" "	"	"
N. E. ¼ S. E. ¼; & W. ¼ S. W. ¼; & W. ½ N. W. ¼; & lots 1, 2, 3, 4, 5, 6, 7, & 8	33	"	"			"	" "	"	"
All of	35	"	"			"	" "	"	"
All of	1	88	29			"	" "	"	"
All of	3	"	"			"	" "	"	"
All of	5	"	"			"	" "	"	"
All of	7	"	"			"	" "	"	"
All of	9	"	"			"	" "	"	"
All of	11	"	"			"	" "	"	"
All of	13	"	"			"	" "	"	"
All of	15	"	"	9,241	87	"	" "	"	"
All of	17	"	"			"	" "	"	"
All of	21	"	"			"	" "	"	"

All of	23	"	"				"	"	"	"	"
All of	25	"	"				"	"	"	"	"
All of	27	"	"				"	"	"	"	"
349 N. ½ N. E. ¼	29	"	"				"	"	"	"	"
All of	35	"	"				"	"	"	"	"
E. ½ N. E. ¼, & E. ½ S. E ¼	1	88	39	186	62		"	"	"	"	"
W. ½ N. E. ¼, & S. E. ¼, & W. fl ½	19	89	27				"	"	"	"	"
S. ½ S. W. ¼	21	"	"				"	"	"	"	"
N. W. ¼ S. E. ¼; & S. ½ S. E. ¼; & S. W. ¼, & S. ¼ N. W. ¼	27	"	"				"	"	"	"	"
All of	29	"	"	3,327	64		"	"	"	"	"
All of	31	"	"				"	"	"	"	"
All of	33	"	"				"	"	"	"	"
W. ½ S. E. ¼; & S. W. ¼; & S. ½ N. W. ¼, & N. W. ¼ N. W. ¼	35	"	"				"	"	"	"	"
S. W. ¼ N. E. ¼; & W. ½ S. E. ¼, & W. ½	1	89	28			May 6, '56	Des Moines Nav. & R. R. Co.		May 3, '58	14	"
All of	3	"	"				"	"	"	"	"
All of	5	"	"				"	"	"	"	"
N. E. ¼ N. E. ¼, & lots 1, 2, 3, 4, 5, & 6	7	"	"				"	"	"	"	"
All of	9	"	"				"	"	"	"	"
All of	11	"	"				"	"	"	"	"
W. ½ N. E. ¼; & N. W. ¼ S. E. ¼; & S. ½ S. E. ¼ and W. ½	13	"	"				"	"	"	"	"
All of	15	"	"				"	"	"	"	"
E. ½; & N. E. ¼ S. W. ¼, & E. ½ N. W. ¼	17	"	"	8,883	61		"	"	"	"	"
All of	21	"	"				"	"	"	"	"
All of	23	"	"				"	"	"	"	"
All of	25	"	"				"	"	"	"	"
All of	27	"	"				"	"	"	"	"
S. ½ N. E. ¼, & S. E. ¼	29	"	"				"	"	"	"	"
Lot No. "1"	31	"	"				"	"	"	"	"
All of	33	"	"				"	"	"	"	"
All of	35	"	"				"	"	"	"	"
S. E. ¼ S. E. ¼, & lots 1, 2, & 3	1	"	29	149	02		"	"	"	"	"
W. ½ N. E. ¼; & W. ½ S. E. ¼, & W. ½	1	90	28				"	"	"	"	"
All of	3	"	"				"	"	"	"	"
All of	5	"	"				"	"	"	"	"
N. ½; & S. E. ¼; & E. ½ S. W. ¼, & N. W. ¼ S. W. ¼	7	"	"				"	"	"	"	"
All of	9	"	"				"	"	"	"	"
All of	11	"	"				"	"	"	"	"
W. ½ N. W. ¼	13	"	"				"	"	"	"	"
All of	15	"	"				"	"	"	"	"
All of	17	"	"				"	"	"	"	"
All of	19	"	"	10,081	66		"	"	"	"	"
All of	21	"	"				"	"	"	"	"
All of	23	"	"				"	"	"	"	"
W. ½ S. W. ¼ & S. W. ¼ N. W. ¼	25	"	"				"	"	"	"	"
All of	27	"	"				"	"	"	"	"
All of	29	"	"				"	"	"	"	"
E. ½, & lots 1, 2, 3, & 4	31	"	"				"	"	"	"	"
350 All of	33	"	"				"	"	"	"	"
All of	35	"	"				"	"	"	"	"
Lot "1"	1	90	29				"	"	"	"	"
S. E. ¼ N. E. ¼; & S. E. ¼, & lots 1, 2, 3, & 4	13	"	"	484	93		"	"	"	"	"
Lots 1 & 2	25	"	"				"	"	"	"	"

Parts of sections.	Sections.	Township	Range.	Acres.	100ths.	Date of sale.	To whom sold and patented.	Date of patent.	No. of patent.
S. W. ¼ N. E. ¼; & N. W. ¼; & S. ½, & lots 1 & 2	5	91	27	1,365	21	May 6, '56	Des Moines Nav. & R. R. Co.	May 3, '58	14
All of	7	"	"			"	"	"	"
W. ½ N. W. ¼	31	"	"			"	"	"	"
All of	1	91	28			"	"	"	"
All of	3	"	"			"	"	"	"
All of	5	"	"			"	"	"	"
Lot 1 & 2	7	"	"			"	"	"	"
All of	9	"	"			"	"	"	"
All of	11	"	"			"	"	"	"
All of	13	"	"			"	"	"	"
All of	15	"	"			"	"	"	"
E. ½ N. W. ¼; & S. W. ¼, & lots 1 & 2	17	"	"			"	"	"	"
Lots 1, 2, 3, & 4	19	"	"	9,797	87	"	"	"	"
All of	21	"	"			"	"	"	"
All of	23	"	"			"	"	"	"
All of	25	"	"			"	"	"	"
All of	57	"	"			"	"	"	"
E. ½; & E. ½ N. W. ¼; & N. E. ¼ S. W. ¼, & lots 1, 2, 3, & 4	29	"	"			"	"	"	"
Lot 1	31	"	"			"	"	"	"
All of	33	"	"			"	"	"	"
All of	35	"	"			"	"	"	"
All of	5	92	27			"	"	"	"
All of	7	"	"			"	"	"	"
All of	9	"	"			"	"	"	"
W. ½; N. W. ¼ of	15	"	"			"	"	"	"
All of	17	"	"	5,300	13	"	"	"	"
All of	19	"	"			"	"	"	"
All of	21	"	"			"	"	"	"
All of	29	"	"			"	"	"	"
All of	31	"	"			"	"	"	"
All of	1	92	28			May 6, '56	Des Moines Nav. & R. R. Co.	May 3, '58	14
N. E. ¼; & N. ½ N. W. ¼; & S. E. ¼ N. W. ¼; E. ½ S. E. ¼ & N. W. ¼ S. W. ¼; & lots 1, 2, & 3	3	"	"			"	"	"	"
N. ½ & S. E. ¼; & lots 1 & 2	11	"	"			"	"	"	"
All of	13	"	"			"	"	"	"
Lots 1 & 2	15	"	"			"	"	"	"
All of	23	"	"	5,450	44	"	"	"	"
All of	25	"	"			"	"	"	"
S. E. ¼ N. E. ¼; & S. E. ¼; & lots 1, 2, 3, & 4	27	"	"			"	"	"	"
Lot 1	31	"	"			"	"	"	"
S. ½ N. E. ¼; & S. ½, & lots 1, 2, 3, & 4	33	"	"			"	"	"	"
All of	35	"	"			"	"	"	"
Lot 3	11	80	25		04	"	"	"	"
S. W. ¼ of N. W. ¼	29	"	"	40		May 14, '55	"	"	9
N. W. ¼ N. W. ¼	31	"	25	42	08	"	"	"	"
S. E. ¼ S. E. ¼	13	78	"	40		May 6, '56	"	"	"

| | | |

352 This indenture, made this 18th of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company for the improvement of the navigation of the Des Moines River, in the State of Iowa, and in pursuance of a joint resolution of the general assembly of the State of Iowa, approved the 23d day of March, 1858, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company the following described lands, to wit: All lands granted by an act of Congress approved August 8, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which had been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company, or its assigns, shall have right to all of said lands so herein granted to them, as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatsoever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefore by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company. And it is understood that among the lands excepted and not granted by the State to the said company are 25,487.87 acres, lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa:

To have and to hold the above-described lands, and *such* and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining unto the said Des Moines Navigation and Railroad Company, their successors and assigns, forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.
By JNO. M. DAVIS, *Deputy.*

This is to certify that the foregoing deed was received from the governor June 10, 1858, and recorded in Des Moines River records, book "A," pages 45 & 46, June 18, 1852[8.]

T. S. PERRIN,
Register of State Land Office.
By D. S. WARREN, *Deputy.*

STATE LAND OFFICE,
Des Moines, July 22, 1862.

I, A. B. Miller, register of the State land office for the State of
353 Iowa, do hereby certify that the within and foregoing lists are true and exact exemplifications of the sales and records of patents made out for the "Des Moines River grant," or land certified to the State of Iowa under the act of August 8th, 1846, for the improvement of the navigation of The Des Moines River, as shown by the records and plats on file in this office, giving a description of the lands sold, the amount paid therefore, date of sale, "name of purchaser," to whom patented, date and No. of patent, except a part of that sold to The Des Moines Navigation and Railroad Company, the date of which sale is not in this office, but the dates of the patents are shown, and the consideration for this latter class of lands was work upon the improvement of the Des Moines River, upon which the navigation company took lands at $1 25 per acre. These lists include all lands heretofore certified to the State under the act of 1846, above the mouth of the Raccoon Forks, and includes a copy of a deed made out to the "Des Moines Navigation and Railroad Company," for all of their lands to which the State of Iowa had any title.

In testimony whereof I have hereunto set my hand and date *afore* [above]written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE, IOWA,
Des Moines, July 22, 1862.

I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the above-named A. B. Miller was duly elected and qualified register of the State land office; that he is, by the laws of the State of Iowa, the custodian of all the books, [plats,] and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is [entitled] to full faith and credit, and that the above is his genuine signature.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of Iowa to be hereunto affixed, the date above written.

[L. S.] SAM'L J. KIRKWOOD.

By the governor:

ELIJAH SELLS,
Sec'y of State.

STATE OF IOWA, *Polk County, ss:*

I, Charles H. Parker, do state on oath, that the above and foregoing list was made by me from the original, and the same is a true and correct copy thereof, as I verily believe.

CHARLES H. PARKER.

Subscribed & sworn to by Charles H. Parker, before me, the 7th day of December, A. *A.* 1869.

[SEAL.] JOHN D. RIVERS,
Notary Public, Polk County, Iowa.

(Endorsed:)

This list was received with the governor's letter of 20th November, 1862, in reply to the call of the commissioners of 26th June, 1862, under the joint resolution of March 2d, 1861, for lands sold by the State.

(Endorsed:) Filed Oct. 19, 1870, and read in evidence on trial of the above causes. George B. Corkhill, clerk.

354 *Articles of incorporation of the Des Moines Navigation and Railroad Company.*

DES MOINES NAVIGATION AND RAILROAD COMPANY,
Ottumwa, June 22d, 1854.

I certify that the annexed paper, marked "A," is a true copy of the "articles of incorporation" of the "Des Moines Navigation and Railroad Company," (a corporation formed under the code of Iowa,) of which "article" a record is made in the recorder's office of Wapello County, and a publication made in the "Courier" newspaper, published in Ottumwa, the copy hereto annexed being designed for record in the secretary's office of the State of Iowa, as required by the code.

A copy of the seal of the company is hereto annexed (above.)

HENRY O'RIELLY,
Secretary of the "Des Moines Navigation and Railroad Company."

"A."—*Referred to in the foregoing certificate.—Article of incorporation under the code of Iowa.*

In pursuance of the provisions of chapter forty-three of title ten of the code of Iowa, entitled "Corporations for pecuniary profit," approved February 5th, 1851, the undersigned and their associates adopt the following article' of incorporation, to wit:

1. The principal object and business of the corporation hereby intended, is to improve the navigation of the Des Moines River by means of dams, and locks, and canals, and otherwise as may be found expedient and proper to effect the object, and to construct railroads connected with or seperate from the same, as may be deemed advisable.

2. The corporate name shall be the "De' Moine' Navigation and Railroad Company."

3. The capital stock of the company shall be three millions of dollars; its principal place of transacting business, Ottumwa, with an office, if necessary, at Keokuk, and Fort De' Moine', and New York, or either, as notice shall be given. The shares of stock representing the said capital and the corporate property of the said company, to be one hundred dollars each, transferable as provided in the by-laws of said company; five per cent. to be paid on subscription, and subject to calls from time to time as may be necessary in transacting the business of the said company, and as provided for in the by-laws of said company.

4. The corporation to commence on the sixth day of May, 1854, and continue for fifty years from that date, unless sooner dissolved under and in pursuance of the laws of the State of Iowa.

5. The highest amount of indebtedness or liability which the said corporation shall at any time subject itself shall not exceed two millions of dollars.

6. The private property of stockholders or members of the corporation shall not be liable for corporate debts.

7. The officers or persons who shall conduct the affairs of the company shall be the president and board of directors of the said company.

8. The directory shall consist of nine persons. The first directors shall hold their offices respectively for one year from the first day of July, 1854, after which time they shall be elected by the stockholders anuually.

9. In case of resignation or death of any director or of vacancy

355 from other causes, the remaining directors shall fill the vacancy for the remainder of the term.

10. The president and secretary to be designated by the board of directors, and to hold the said offices during the term of office of a director.

Dated May 6th, 1854.

(Signed) ORVILLE CLARK.
JOHN STRYKER.
EDWIN C. LITCHFIELD.
B. C. WHITTEMORE.
PORTER KIBBEE.
HENRY TEN EYCK.
HENRY O'RIELLY.
NELSON P. STEWART.
E. B. LITCHFIELD.
A. HUNT.

Filed July 7, 1854.

GEO. W. McCLEARY,
Sec'y of State.

STATE OF IOWA,
Office of Secretary of State:

I, Ed. Wright, secretary of state of the State of Iowa, do hereby certify that the foregoing is a correct copy of the official article of incorporation, as the same appears on file in this office.

In testimony whereof I have hereunto set my hand and affixed the official seal of the State of Iowa.

Done at Des Moines, this third day of July, A. D. 1868.

[L. S.] ED. WRIGHT,
Secretary of State of Iowa.

OFFICE OF THE DE' MOINE' NAV. & R. R. CO.,
18 *William street, New York, April 15th,* 1858.

At a meeting of the board of directors of the De' Moine' Navigation and Railroad Company, held at their office in the city of New York, on Thursday, the 15th day of April, 1858, the following preamble and resolutions were adopted, to wit:

Whereas, by joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, the general assembly did enact as follows, viz:

Joint resolution containing propositions for a settlement with the De' Moine' Navigation and Railroad Company.

Whereas the De' Moine' Navigation and Railroad Company have heretofore claimed and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen and do now exist between the State of Iowa and said company, and it being conceived to be the interest of all parties concerned, to have said matters and all matters and things between the said company and the State of Iowa settled and adjusted: Now, therefore,

Be it resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges

356 of all contracts, agreements, and claims with or against the State, including rights to water-rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby, by the State, secured to the said company, and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement: and the State of Iowa shall, by its proper officers, certify and convey to the *to the* said company all land granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said company or its assignees shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims, in reference to the same, and all pay or compensation therefor by the General Government, but at the cost and charges of said company, and the State to hold all the balance of said lands and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that, among the lands excepted and not granted by the State to said company are 25,487 $\frac{87}{100}$ acres lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa; and it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials, of every kind and description, prepared for or intended for construction of locks or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature, excepting as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts and percentage retained thereon, excepting that the company shall pay all estimates for work done or materials prepared up to this date, beyond the percentage retained from the contractors under their agreements, and the said company shall be discharged from all claims against the State, or the *the* said improvement, or any of its officers or agents, arising from or growing out of any agreement or liability prior to the 9th day of June, 1854, and said company shall be discharged from all liability for the claims of the officers of the State for services or salaries. The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement as fast as he may require the same to liquidate existing liabilities against said Des Moines River improvement, on thirty days' notice given to said company, at their office in the city of New York, and any bonds or certificates of indebtedness against said improvement, not exceeding in amount the sum of eleven thousand dollars, which are due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: *Provided*, That no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity; but all such liabilities, if any, shall be charg'able upon, and payable out of, the remaining lands belonging to the Des Moines River grant: *And provided, also,*
357 That, if Congress shall permit, a diversion of the lands of said Des

Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all the liabilities as aforesaid against said improvement, and the completion of such locks and dams in the Des Moines River as the legislature shall direct, shall be granted to The Keokuk, Fort Des Moines, and Minnesota Railroad Company to aid in the construction of a railroad up and along the valley of the Des Moines River upon such terms and in such manner as the legislature may provide; one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided further*. That, if The Des Moines Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution. then this contract shall be in force, and bind both of the parties thereto.

(Signed) STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved March 22d, 1858.

RALPH P. LOWE.

STATE OF IOWA, *ss:*

I, Elijah Sells, secretary of state of the State of Iowa, hereby certify that the foregoing is a true copy from the original roll on file in my office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Iowa. Done at Des Moines this 22d day of March, 1858.

[L. S.] (Signed) ELIJAH SELLS.

Resolved, That the propositions and conditions of the above-recited joint resolutions be, and they are hereby, ratified and accepted by the Des Moines Navigation and Railroad Company, and that the president of the company cause a certified copy of this resolution, under the corporate seal, to be filed in the office of the secretary of state of the State of Iowa.

Resolved, That the president be, and he is hereby, authorized to execute, under the corporate seal of the company, the necessary and proper releases and discharges, in conformity with the provisions and conditions of the said joint resolutions of the general assembly of the State of Iowa, and to cause the same to be filed in the office of the secretary of state of the State of Iowa.

I hereby certify that the foregoing is a true copy of resolutions of the De' Moine' Navigation and Railroad Company, adopted by the board of directors of said company, at a meeting held on the 15th day of April, 1858, and duly recorded upon their book of minutes.

In witness whereof I have hereunto affixed the corporate seal of the said company, together with my signature as its president, and have caused the same to be witnessed by the secretary of the said company.

(Signed) R. S. BURROWS,
President of De' Moine' Nav. & R. R. Co.

(Signed) JA'S C. PATTERSON,
Secretary of De' Moine' Nav. & R. R. Co.

358 (Endorsed as follows:) U. S. circuit court. W'm Baker vs. Jesse Williams. Filed Oct. 19th, 1870, and read on hearing of the above-entitled cause.

GEORGE B. CORKHILL, *Clerk.*

STATE OF IOWA:

OFFICE OF THE SECRETARY OF STATE,
Des Moines, , 18 .

I, Ed. Wright, secretary of state of the State of Iowa, hereby certify that the foregoing is a true and correct copy of the original acceptance of the De' Moine' Navigation and Railroad Company, filed in my office on the 28th day of April, A. D. 1858.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Iowa, this 1st day of August, A. D. 1870.

[SEAL.] ED. WRIGHT,
Secretary of State.

For and in consideration of eighteen hundred and forty dollars, The De' Moine' Navigation and Railroad Company, (a corporation organized under the laws of the State of Iowa,) doth hereby grant and convey to William Baker, of Toledo, State of Ohio, the following tract of land in the State of Iowa, to wit: In Boone County, the southeast quarter of the southeast quarter of section eleven, in township eighty-three, range twenty-seven; also the northeast quarter of section twenty-three, in township eighty-three, range twenty-seven, making a total of two hundred acres.

And the said The De' Moine' Navigation and Railroad Company doth hereby warrant the title against all persons whomsoever.

In witness whereof Roswell S. Burrows, president, and Alva Hunt, treasurer of said company, having been hereunto duly authorized, have hereunto set their hands and affixed the seal of said company this third day of March, in the year one thousand eight hundred and fifty-eight.

{ DE' MOINE' NAVIGATION AND RAILROAD COMPANY. INCORPORATED 1854. }

R. S. BURROWS, *Pres't.*
A. HUNT, *Treas.*

STATE OF NEW YORK,
County of New York, ss:

I certify that I, the subscriber, am a commissioner for the State of Iowa in and for the State of New York; that, on the fifteenth day of May, 1858, personally appeared before me Roswell S. Burrows, president, and Alvah Hunt, treasurer, personally known by me to be the identical persons whose names are affixed to the within deed as grantors, and acknowledged the instrument to be their voluntary act and deed. Given under my hand and official seal, in the day and date above written.

{ JAMES C. PATTERSON, COMMISSIONER OF DEEDS FOR IOWA. }

JA'S C. PATTERSON,
Commissioner for Iowa in New York.

Whereas the De' Moine' Navigation and Railroad Company did, on the twenty-seventh day of August, 1855, sell, assign, transfer, and set over to me, Daniel B. St. John, by mortgage and in trust, to secure the payment of bonds to be issued by the said De' Moine' Navigation and Railroad Company in the construction of the Des Moines River improvement, as authorized by the State of Iowa, all the lands which the

said De' Moine' Navigation and Railroad Company then had, or
359 should at any time thereafter have, or be entitled to, under its contracts with the State of Iowa for the purpose aforesaid, and the said mortgage or deed of trust embraced the lands described in the accompanying deed; and it is expressly covenanted in said mortgage or deed of trust, that whenever the trustees of the sinking fund, in said mortgage provided, shall certify to me that they have received from said company in cash, or in securities, which are the first lien on said lands, or in the bonds issued in pursuance of said mortgage to an amount equal to three dollars per acre of the lands required to be released from the lien of said mortgage, that it shall be my duty to release the same:

Now, therefore, this deed of release witnesseth that the trustees of the sinking fund, in said mortgage or deed of trust provided, have duly certified to me that they have received from said company six hundred dollars in bonds, cancelled by the certificate of the trustees, which to me is satisfactory evidence of the same, and I hereby release, convey, and set over, free, clear, and discharged from the said mortage or deed of trust, bearing date the 27th day of August, 1855, all the lands in the State of Iowa, in the annexed deed described and conveyed.

In testimony whereof I have hereto set my hand and duly executed this release this fifteenth day of May, 1858.

D. B. ST. JOHN, *Trustee.*

STATE OF NEW YORK,
County of New York, ss:

I certify that I, the subscriber, am a commissioner for the State of Iowa in and for the State of New York; that, on the fifteenth day of May, 1858, personally appeared before me, D. B. St. John, trustee, who was personally known by me to be the identical person whose name is affixed to the within deed of release, and acknowledged the same to be his voluntary act and deed.

Given under my hand and official seal on the day and date above written.

JAMES C. PATTERSON, COMMISSIONER OF DEEDS FOR IOWA.

JA'S C. PATTERSON,
Commissioner for Iowa in New York.

(Endorsed:) Deed. The De' Moine' Navigation and Railroad Company to William Baker. Filed Jan'y 19, 10 a. m., 1865, for record.

COUNTY, *ss:*

Recorded on the 20th day of January, 1865, at 12 o'clock m., in liber G of deeds, at page 486. Fees, 90c., p'd.

A. C. LOWRY, *Recorder.*

WILLIAM BAKER
vs.
JESSE WILLIAMS.

Filed Oct. 19th, 1870, and read as evidence on the trial of the above-mentioned case.

GEORGE B. CORKHILL, *Clerk.*

U. S. LAND OFFICE,
Des Moines, Iowa, Sept. 13th, 1869.

Hon. JOS. S. WILSON,
Com. Gen'l Land Office.

SIR: Hundreds of persons who have settled upon, and claim
360 lands known and situated within the "Des Moines River grant," above the "Raccoon Fork," are continually—daily making inquiry at this office in regard to their claims, the probable result or final decision by your Department, and they are growing very impatient, and give me much trouble.

There are quite a number of cases on my desk not disposed of awaiting some action in your Department. I write to inquire if anything has been done, or likely to be soon, that will settle this long-pending controversy about "Des Moines River lands." It is a great curse to our State.

Very respectfully, your ob't serv't,

F. G. CLARK, *Register.*

DEPARTMENT OF THE INTERIOR,
General Land Office, Sept. 17th, 1869.

Hon. J. D. COX,
Secretary of the Interior.

SIR: Referring to our letter of 26th Feb. last, submitting to the Department proper an appeal by Henry Beard, esq., from our ruling of 25th of Feb., 1869, relative to pre-emption and homestead entries on certain odd sections of lands within five miles of the Des Moines River, Iowa, I have the honor to submit herewith letter of 13th inst. from the register at Des Moines, Iowa, representing the anxiety of the settlers in the matter.

I am, sir, very respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, D. C. Aug. 25th, 1870.

SIR: On the 27th day of February, 1869, my predecessor in returning to your office the papers in the case of Levi Hull, involving the right to the northeast quarter of lot No. one, sec. 17, township 83, range 26, in the Des Moines land district, Iowa, remarked that said tract was situate above the mouth of the Rac'oon Fork, in that State, and formed a part of the lands, which, prior to the passage of the joint resolution of March 2d, 1861, had been certified to said State improperly by this Department, as a part of the grant by act of Congress, approved Aug. 8th, 1846, and was then held by a bona-fide purchaser under the State of Iowa. He therefore held that Hull, whose settlement was subsequent to the withdrawal of the land, was not entitled to pre-empt it.

I have considered that decision in connection with the papers submitted with your letter of the 17th of Sept. last, relating to the claim of the Des Moines Navigation and Railway Company to certain land in that State lying within five miles of the Des Moines River, above the Rac'oon Fork, which it is alleged was improperly certified to the State in the years 1851, 1852, & 1853, for the improvement of that river under said act, and was sold by the State to bona-fide purchasers—the company being one of them—as, in that event, their title was, in the view of my predecessor, confirmed to them, they ask that it be respected by

the Department, and that no pre-emption, homestead, or other entry be allowed to any of such lands.

I did not reply to your letter of an earlier date, inasmuch as instruction had been already given to the local officers not to per-
361 mit such enteries, and as the questions passed upon by my predecessor were involved in the case of Hannah Riley vs. William B. Wells, then pending before the Supreme Court of the United States. Wells derived title by a deed from the Des Moines Company. Riley took possession of the tract in 1855, and claimed it under the pre-emption act of Sept. 4th, 1841; upon proving settlement and cultivation she was permitted to make entry at the local office, and a patent for the tract was issued to her in 1863. It was a part of the lands falling within the category of those mentioned in the letter of my predecessor, as having been improperly certified to the State.

The Supreme Court, at the last term, held that the joint resolution, and the act of August 12th, 1862, confirmed the title in the company; and that Riley's entry and the patent issued to her, were in violation of law, and void.

The judgment of the court below, awarding the tract to Wells was affirmed.

As the decision of my predecessor has thus been sanctioned by the Supreme Court, it is the duty of the Department and of your office to execute it in all cases where it is applicable. The papers are returned.

Very respectfully, your ob't serv't.

J. D. COX,
Secretary.

Hon. JOS. S. WILSON,
Com. of the Gen'l Land Office.

(Endorsed as follows:) William Baker vs. Jesse Williams. Certificate of Com. of Gen'l Land Office. Opinion of J. D. Cox, read on hearing, & filed Oct. 19th, 1870. George B. Corkhill, clerk.

And afterward, on the 19th day of October, A. D. 1870, came said defendant, by his solicitors, Finch & Rivers, and filed in said clerk's office, depositions of J. A. Harvey in above-entitled cases; which depositions were in the words and figures following, to wit:

U. S. circut court, district of Iowa.

W'M BAKER
vs. } Original bill in equity.
JESSE WILLIAMS

JESSE WILLIAMS
vs. } Cross-bill in equity.
WILLIAM BAKER.

It is hereby stipulated and agreed that deposition of Josiah A. Harvey, a witness on behalf of the above-named William Baker in the above-entitled actions, may be taken before the clerk of the district court of Fremont County, Iowa, upon the annexed interrogatories and cross-interrogatories without any dedimus or commission whatever, and without any notice other than this stipulation; and it is also stipulated that the said clerk on receipt of this stipulation at his office in Sidney,

in said county of Fremont, or at such other place and time as he may designate and appoint, may proceed to take the depositions of
362 said Josiah A. Harvey, a resident of Sidney aforesaid, upon the annexed interrogatories and cross-interrogatories, and that said depositions, when taken, shall be returned by mail to the clerk of the circuit court of the United States at Des Moines, and that the same may be read and used on the trial and hearing of this action, with the same effect and the same right to the parties as though said deposition was taken in accordance with the rules and practice of this court, subject to all objections for irrelevancy or immateriality.

Sept. 8th, 1870.

FINCH & RIVERS,
Sol'rs for Baker.
ISAAC COOK,
Sol. for Williams.

Interrogatories to be propounded to Josiah A. Harvey, a witness in behalf of William Baker, residing at Sidney, Fremont County, Iowa, under and by virtue of the foregoing and annexed stipulation—

First. What is your name, age, place of residence, and occupation?

Second. Are you acquainted with the parties or either of them; and if so, how long have you them or either of them?

Third. State whether or not you are the person designated and appointed as agent of the State of Iowa to adjust the land claims between the State of Iowa and the Government of the United States in, by, and under the act of the general assembly of the State of Iowa, approved March 30, 1866, and entitled "An act providing for the adjustment of certain land claims with the General Government."

Fourth. If you answer the third interrogatory in the affirmative, then state whether or not, as such agent, you undertook the discharge of the duties imposed by the said act of the general assembly, and performed the same.

Fifth. If you did as such agent under said act make an adjustment of said land grants by the Gen'l Gov't to the State of Iowa, state when, and where, and by whom such adjustment was made, and whether or not at such adjustment any other person appointed by the State to represent the interest of the Des Moines Valley Railroad Co. was present; and if so, state who.

Sixth. State whether at such adjustment the corporation known and distinguished as the "De' Moine' Navigation and Railroad Company" or any of its grantees were present or represented; and also state whether or not the said De' Moine' Navigation and Railroad Company or any of its grantees, so far as you know, had any knowledge or notice of the said adjustment or of the time when same was to be made; and also state whether or not, so far as you know, the said De' Moine' Navigation and Railroad Company or any of its grantees were, directly or indirectly, parties to such adjustment, or were consulted with reference to it, or assented to the same, or to the making thereof, as made and stated in your report of the said adjustment to census board of the State of Iowa.

Seventh. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

363 In the United States circuit court, district of Iowa.

WILLIAM BAKER
vs.
JESSE WILLIAMS.

Depositions of JOSIAH A. HARVEY, taken before me at my office in Sidney, in the county of Fremont, and State of Iowa, on this 1st day of October, 1870, in pursuance of the stipulation hereunto annexed, to wit:

The said witness being first duly sworn, deposes and states—

Interrogatory 1st. What is your name, age, place of residence, and occupation?

Answer. My name is Josiah A. Harvey; my age is forty-two years; my place of residence is Sidney, Fremont County, Iowa; and my occupation, practicing law and farming.

Int. 2d. Are you acquainted with the parties or either of them; and if so, how long have you known them, or either of them?

Answer. I am not acquainted with the defendent. I have been acquainted with pl'ff, W'm Baker, as well as I now remember, some six or seven years.

Int. 3d. State whether or not you are the person designated and appointed, as agent of the State of Iowa, to adjust the land claims between the State of Iowa and the Government of the United States, in, by, and under the act of the general assembly of the State of Iowa, approved March 30, 1866, and entitled "An act providing for the adjustment of certain claims with the General Government?

Answer. I am the person appointed in and by said act a commissioner for the State of Iowa to adjust said claims.

Int. 4th. If you answer the third interrogatory in the affirmative, then state whether or not, as such agent, you undertook the discharge of the duties imposed by said act of the general assembly and performed the same?

Answer. I did undertake the duties so imposed and discharged the same, except as to claims arising under the swamp grant of Sept. 28, 1850, which, to a great extent, still remain unsettled.

Int. 5th. If you did as such agent und' said act make an adjustment of said land grants by the General Government to the State of Iowa, state when, and where, and by whom such adjustment was made, and whether or not at such adjustment, any other persons, appointed by the State to represent the interest of the Des Moines Valley Railroad Company, *was* present; and if so, state who?

Answer. I effected adjustment of various claims at different and diverse times, but the adjustment concerning the "Des Moines River lands," and the one I understand to be referred to, was made about the 28th day of May, 1866, and received the secretary's approval on the 29th of said month, and was made at the General Land Office, Interior Department of the General Government, in the city of Washington, District of Columbia, and by the Commissioner of the General Land Office, (acting under the approval and sanction of the Secretary of the Interior,) on the part of the Government, and myself on behalf of the State of Iowa, but before becoming complete or binding on the State under the act of the legislature the settlement was to have the sanction of the census board of the State. (A correct report of this settlement will be found in the report of the register of the State land office

364 of the State of Iowa, of Nov. 12, 1867, commencing on page 23.)

No other person, appointed by the State to represent the interest of the Des Moines Valley Railroad Company, was present at the time the settlement was effected, if I remember correctly.

Int. 6th. State whether at such adjustment the corporation known and designated as "The Des Moines Navigation and Railroad Company" were present or represented, and also state whether or not said navigation and railroad company or any of its grantees, so far as you know, had any knowledge or notice of said adjustment, or of the time when the same would be made, and also state whether or not, so far as you know, the said "Des Moines Navigation and Railroad Company" were, directly or indirectly, parties to such adjustment, or were consulted with reference to it, or assented to the same, or to the making thereof, as made and stated in your *in your* report of said adjustment to the census board of the State of Iowa?

Answer. Neither the "Des Moines Navigation and Railroad Company," nor any of its grantees, were present at such adjustment, nor were they or either of them, so far as I know, notified of the time when it would be made, or consulted in reference to it, and neither were, directly or indirectly, parties to said adjustment, or assented to the same, so far as I know.

Int. 7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the cause, or either of them, or that may be material to this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Not being advised as to the matters in issue further than I gather from the interrogatories asked me, I am unable to determine what other facts of my knowledge would be of service to either party; but, as material to this examination, I properly state further as to the subject of the fifth interrogatory, that, although the "Des Moines Navigation and Railroad Company" was not represented there at the time the adjustment was completed, still it had, through its representatives and officers, been laboring to have the adjustment made on the terms on which it was made, (as set forth in my report above referred to, and as shown in papers on file in the State land office,) and said adjustment was understood to be made with their assent and approbation, and in accordance with their desire.

And as to the subject of interrogatory sixth, I state further that, after my appointment as commissioner, I had, both before and after said adjustment was made, conversations on the subject with John Browne, the agent (as well as a member) of the "Des Moines Navigation and Railroad Company;" he knew that the adjustment would be made and the terms of it, and always sought these interviews, or brought about the conversations, for the purpose, apparently, of objecting to the proposed action. He was inclined to protest against it as an infringement on the rights of *of* said company and its grantees; and although I did not notify him of the exact time, I did give him to understand that, under the State legislation and the law as understood to be settled in the Litchfield case, (the decision in the Wolcott case not being then made, (I felt warrented in making the adjustment on the terms proposed, and would do so, leaving all who considered themselves aggrieved thereby to seek redress in the court.

JOSIAH A. HARVEY.

STATE OF IOWA, *Fremont County, ss:*

I, J. C. Shockley, clerk of the district court in and for said
365 county, hereby certify that the foregoing deposition of J. A. Harvey was taken before me, at my office in Sidney, in said county, on the 1st day of October, 1870, in pursuance of stipulation hereunto attached; that said witness was sworn to testify the whole truth, of his knowledge touching the matters in issue in said cause, and to make true answers to the interrogatories propounded, and that he transcribed said interrogatories, and wrote out his said deposition in his own hand, and then subscribed and swore to the same before me, the day above written.

Witness my hand and official seal, the aforesaid

[SEAL.] J. C. SHOCKLEY,
Clerk, D. C.

(Endorsed as follows:) W'm Baker v. Jesse Williams. Depositions of J. A. Harvey, read on hearing of cause, Oct. 19th, 1870. George B. Corkhill, clerk.

On the 29th day of April, A. D. 1870, came the said parties, by their solicitors, Isaac Cook & N. M. Hubbard, for complainant, & Finch & Rivers for defendant, and filed in said clerk's office their stipulation in the above-entitled cause; which said stipulation was in the words and figures following, to wit:

Stipulation.

U. S. circuit court, district of Iowa.

JESSE WILLIAMS, COMPL'T, *ag'st* W'M BAKER. } Cross-bill.

It is hereby stipulated by the parties to the above suit that the depositions of John Brown, Samuel G. Wolcott, & Calvin Burr, taken in above cause, may be opened by the clerk, and certified copies made for use in similar cases pending in Boone dist. court.

ISAAC COOK &
N. M. HUBBARD,
Att'ys for Williams.
FINCH & RIVERS,
Atty's for Baker.

I assent to the above stipulation in the above case, and in the cases which I am att'y in Boone district court.

Ap'l 27, 1870.

J. M. ELLWOOD.

(Endorsed:) Jesse Williams vs. William Baker. Stipulation in relation to depositions. Filed Apr. 29, 1870. George B. Corkhill, cl'rk.

Here the said William Baker rested his case.

Then came the said Jesse Williams, by his solicitor, Isaac Cook, and, to sustain the issues on his part, produced, filed, and read in evidence on the trial of said entitled cause the documents attached as exhibits to his cross-bill aforesaid, together with the following, to wit:

366 (No. 1.)

In the circuit court.

UNITED STATES, *State of Iowa:*

WILLIAM BAKER
vs.
JESSE C. WILLIAMS. } In equity.

JESSE C. WILLIAMS
vs.
WILLIAM BAKER. } Cross-suit in equity.

It is stipulated by the parties to the cause, entitled and pending as above, that all and singular the printed documents attached as exhibits to the cross-bill of said Williams, filed July 20th, 1869, may be introduced and read in evidence by said Williams on the trial and hearing of this cause, the same as the original thereof might be if produced and duly proved, subject, however, to objections as to their materiality and relevancy, to wit:

A. Act of Congress of 8 August, 1846.
B. Act of Congress of 3 August, 1854.
C. Act of Congress of 15 May, 1856.
D. Joint resolution of Congress of 2 March, 1861.
E. Act of Congress of 12 July, 1862.
F. Sec. 4. Act of Congress of 2 June, 1864.
G. Sec. 10. Act of Congress of 3 March, 1865.
H. Joint resolution gen'l assembly of Iowa, 22 Mar., 1858.
I. Act of Iowa gen'l assembly, 14 July, 1856.
K. Act of Iowa gen'l assembly, 17 March, 1860.
L. Act of Iowa gen. assembly, 26 March, 1860.
M. Act of Iowa gen'l assembly, 30 March, 1866.
36, 37, 38. List of lands app'd 7 April, 1863.
N. Governor Stone's certificate, 31 Oct., 1864.
O. Governor Stone's certificate, 31 Oct., 1864.
P. Governor Stone's certificate, 24 Mar., 1866.
Q. Governor Stone's certificate, 24 Mar., 1866.
R. Governor Stone's certificate, 2 July, 1867.
U. 1. Letter of Com'r of Gen'l L. O., 7 June, 1860.
2. Letter of W'm T. Steiger, 1 June, 1860.
3. Letter of Hon. Cha's Mason.
4. Letter of W'm T. Steiger, 6 June, 1860.
5. Letter of Hon. J. Thompson, 11 June, 1860.
W. The following parts & portions may be read—
1. Letter of Com'r of Gen'l L. O., 18 M'ch, 1862.
2. Letter of Com'r of Gen'l L. O., 2 Apr., 1862.
3. Joint res'n gen'l assembly of Iowa, 7 Apr., 1862.
4. Letter of Hon. Caleb B. Smith, 10 Apr., 1862.
5. Acceptance by Iowa of extension of grants.
X. Certificate Com'r Gen'l L. O., 25 Apr., 1862.
Tabular statement.
Y. Harvey's settlement, pp. 89 to 100 inc. of said exhibit.
41. Record in S. C. U. S. in case of Sam'l G. Wolcott v. D. M. N. & R. R. Co.
40. Record in S. C. U. S. in case of Calvin Burr v. D. M. N. & R. R. Co.

367 It is also further stipulated and agreed that either party may read in evidence on the trial of this action, subject to all legal objections on the ground of immateriality or irrelevancy, any statute or resolution passed by the Congress of the U. S., or any statute or resolution passed by the gen'l assembly of Iowa.

It is further stipulated and agreed and admitted that, on the 14th of June, A. D. 1866, there was certified & app'd to the State of Iowa, under the joint resolution of Congress of 2d March, A. D. 1861, 44,838.64 acres, lying outside of the railroad limits of the grants of 15 May, 1856, which are all the lands certified under said resolution.

It is further stipulated and agreed that the plaintiff in said cross-bill may read in evidence the deed from said Cedar Rapids and Missouri River Railroad Company to said plaintiff to the premises in controversy in this suit, or a certified copy of such deed, subject to any objection that might be urged to the original if the original and not a copy was offered, and no other.

It is admitted that the indemnity lands certified to Iowa under the act of Congress of 12 July, 1862, have been conveyed and set apart for the Des Moines Valley R. R. Company, and that no part thereof have been conveyed to or set apart for the Des Moines Navigation and R. R. Comp'y, and that said Des Moines Vall'y R. R. Company has constructed, and are now operating, a railroad from Keokuk up the valley of the Des Moine' River to Fort Dodge, in Iowa, a distance of 250 miles, cros'ing said Cedar Rapids and Missouri River Railroad nearly at a right angle, and that said D. M. V. R. R. Co. has succeeded to all the right, privelages, and property of The Keokuk, F't Des Moines and Minnesota R. R. Co.

It is admitted that the "Des Moines Navigation and Railroad Company" is a corporation, duly organized on the 6th day of May, A. D. 1854, and ever since, and now existing under the laws of Iowa, and that "The Cedar Rapids and Missouri River Railroad Company" is a corporation, duly organized in the year 1858 or 1859, and has ever since existed, and is now existing, under the laws of Iowa.

Aug. 11, 1870.

ISAAC COOK,
Sol. for Williams.
FINCH & RIVERS,
Sol. for Baker.

(Endorsed as follows:) U. S. circuit court, dist of Iowa. William Baker ag'st Jesse C. Williams. Stipulation for Williams. Read on hearing, and filed Oct. 19th, 1870. George B. Corkhill, clerk.

(No. 2.)

In the circuit court.

UNITED STATES, *State of Iowa:*

WM BAKER, PL'FF,
vs.
JESSE C. WILLIAMS, DEFENDENT. } Original bill in equity.

JESSE C. WILLIAMS, PL'FF,
vs.
WM BAKER, DEFENDENT. } Cross-bill in equity.

It is stipulated and agreed in this case that either party may

368 offer in evidence the debates touching the joint resolution of Congress of 2 March, 1861, and the act of Congress of 12 July, 1862, as published in the Congressional Globe, subject to objections on the ground of impertenancy, irrelevancy, or immateriality only.

It is further stipulated and agreed and admitted that, on or before the 9th of June, 1854, there was certified to the State of Iowa, as passing to it under the grant of 8th of August, 1846, lying below the Raccoon Fork, the quantity or amount of 322,393.18 acres; but, of this amount, only 53,553.17 were ever conveyed by the State to said navigation and railroad company, the ballance having been sold and conveyed by the board of public works of the State of Iowa to purchasers from the State.

Aug. 11, 1870.

FINCH & RIVERS,
Sol'r for William Baker.
ISAAC COOK,
Sol. for Jesse Williams.

(Endorsed as follows:) In circuit court of United States. W'm Baker vs. Jesse Williams, & Jesse Williams vs. W'm Baker. Stipulations read on hearing, & filed Oct. 19th, 1870. George B. Corkhill, clerk.

(No. 3.)

Stipulation.

In U. S. circuit court.

JESSE C. WILLIAMS, COMPL'T,
vs.
WILLIAM BAKER, DEF'T.
} Cross-bill in equity.

It is agreed in this cause by the plaintiff and defendent, that all the exhibits or copies of records, correspondence, settlements, lists of lands, or other papers, which belong to public records of the United States or State of Iowa, copies of deeds, &c., (which are annexed to the bills and answers in this cause,) shall be read at the hearing in the same manner as if formally proved by depositions or certificates under seal, subject to exceptions as irrelevant or incompetent to prove any fact material to the controversy.

And any other records or official papers from the executive offices of the United States or the State of Iowa, which either party deem material to his cause, may be read, subject to the same exceptions, upon notice sufficient in time to enable the adverse party to make objections to the genuineness of such papers.

It is further agreed that either party may read on the hearing the whole or any part of the records of the cases of The Des Moines Navigation Co. vs. Calvin Burr, & Samuel G. Wolcott vs. The Des Moines Navigation Co., decided in the Supreme Court of the United States. All congressional and legislative acts and resolutions, which relate to the matter in controversy, may be read from printed statutes without proof.

ISAAC COOK,
Sol. for Compl't.
FINCH & RIVERS,
Sol's for Res.

369 (Endorsed as follows:) Baker vs. Williams. Stipulations read on the hearing & filed October 19, 1870. George B. Corkhill, clerk.

(No. 4.)

W'M BAKER, COMPL'T,
vs.
JESSE C. WILLIAMS, DEF'T. } Bill in equity.

JESSE C. WILLIAMS
vs.
W'M BAKER. } Cross-bill.

In the U. S. circuit court for the dist. of Iowa, Oct. 1, 1870.

Jesse C. Williams, the complainant in the cross-bill above-mentioned, proposes to introduce in testimony on the trial, in addition to the matters mentioned in previous stipulations, the following things, viz:

1. Certified copy of the deed from the Cedar Rapids and Missouri River Railroad to the State of Iowa, dated 22d of February, 1864, for 23,563.24 acres of land sold by the State prior to Jan'ry 19th, 1854, known as Des Moines River lands.

2. Six certificates of lands by the Com'r of the General Land Office and the Secretary of the Interior for the C. R. & M. River Railroad, numbered from 7 to 12, both inclusive, and describing lands outside of Des Moines River grant.

3. Certified copies of deeds from State of Iowa to Des Moines Navigation and Railroad Company, describing lands below the mouth of Raccoon Fork, certified by register of State land office, under date of Sept. 20, 1870.

4. Certified copy of record and docket entries in the cases of S. G. Wolcott and Calvin Burr vs. Des Moines Navigation and Railroad Company, in United States Supreme Court, at the December term of said court of 1864 & 1865.

5. Certified exemplification of record of Wolcott's case above-named in the U. S. circuit court for southern district of New York, dated Sept. 22d, 1870.

6. Certificate of governor of Iowa to Secretary of the Interior of the completion and operation of the Lyons Branch Railroad to be filed when procured.

7. Pamphelts as follows, vis:

a. Report of D. M. River imp'v't and Nav. Co. to his exc'll'y Ja's W. Grimes.

b. Report of joint committee of the gen'l assembly of Iowa, on the "Des Moines River improvement."

c. Report of the commissioner of the Des M. R. im't, dated 1 Jan'y, 1857.

d. Report of the commissioner of the Des Moines River imp'v't, dated 1 Jan'y, 1858.

8. Certified list of lands disposed of by the State of Iowa, under act of Aug. 8, 1846, as certified by register of State land office, under date of Aug. 12, 1870.

9. Original deed from C. R. & M. R. R. to Jesse C. Williams, dated Feb. 24, 1870.

It is agreed that this is the deed of The Cedar Rapids & Mis-

souri River Railroad, and the Jesse C. Williams, named therein, is complainant in the cross-bill herein.

It is agreed that the above may be put in and read subject to objections for irrelevancy and incompetency only.

FINCH & RIVER',
Sol'rs for W'm Baker.

(Endorsed as follows:) U. S. circuit court. W'm Baker vs. Jesse Williams. Williams vs. Baker. Further stipulations for testimony for Williams read on the hearing & filed Oct. 19th, 1870. George B. Corkhill, clerk.

List of the Des Moines River lands sold prior to January 19th, 1854.—Limits of Cedar Rapids & Missouri River Railroad Line.

Whereas the State of Iowa has heretofore, and does now, claim the lands hereinafter described as a part of the lands granted to the State by the provisions of an act of Congress entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the Des Moines River in said Territory," approved August 8th, 1846, and known as the Des Moines River grant; and—

Whereas said lands were certified to said State as a part of said grant under the decision of the General Government that said grant extended to the north line of said State, and were sold by said State to bona-fide purchasers prior to December 23d, 1853; and—

Whereas said decision was afterwards reversed and the certificate, and approval thereunder annulled by the action of the General Government; and—

Whereas said land hereinafter described has been certified and approved to the State of Iowa, for the benefit of the Cedar Rapids & Missouri River Railroad Company, and the act of Congress—"An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," approved May 15th, 1856: Now, therefore—

Know all men that, in view of the premises and for the purpose of enabling the State of Iowa to make good her title to said purchasers for said land, and for and in consideration of an extension of time for the building of said road, and for the further consideration of the sum of one $\frac{25}{100}$ dollars per acre for said land, paid to said company by the State of Iowa, the receipt of which is hereby acknowledged, the said Cedar Rapids and Missouri River Railroad Company hereby release and forever quit-claim to the State of Iowa all right, title, claim, and interest of said company in and to said lands particularly described as follows, to wit:

Parts of sec.	Sec.	Town.	R'ng.	Acres.	Grantees.	Date of sale.
N. W. ¼	3	81	25	147. 06	Thomas Devin	Dec. 22, 1853.
S. W. ¼	3	"	"	160	"	" " "
S. W. ¼	5	"	"	160	Judith S. Walker	Nov. 19, 1853.
N. W. fr. ¼	5	"	"	148. 53	Augustus D. Walker	" " "
N. E. fr. ¼	5	"	"	149. 31	Sarah T. Walker	" " "
S. E. ¼	5	"	"	160	John S. Walker	" " "
N. fr. ½ of N. W. ¼	7	"	"	88. 54	Henry Carr	Nov. 10, "
S. E. ¼	7	"	"	160	Joseph C. Knapp	" 29, "
S. E. ¼ of S. W. ¼	9	"	"	40	Seth Richards	" 21, "
N. W. ¼ of S. W. ¼	9	"	"	40	Richard Pierce	" " "
S. W. ¼ of S. E. ¼	9	"	"	40	Alexander Pierce	June 16, "
W. ½ of N. E. ¼	9	"	"	40	Andrew S. Pierce	March 29, 1852.
371 N. W. ¼	9	"	"	160	Richard Pierce	" " "

Part of section.	Sec.	Town.	Rang'.	Acres.	Grantee.	Date of sale.
S. E. ¼	11	"	"	160	Thomas Devin	Dec. 22, 1853.
S. W. ¼	11	"	"	160	Robert Meek	" " "
N. W. ¼	11	"	"	160	Thomas Devin	" " "
N. ½ of S. E. ¼	1	81	26	120	Willibay Keith	Oct. 4, 1853.
S. W. ¼ of S. E. ¼						
S. E. ¼ of S. E. ¼	3	"	"	39. 50	Daniel J. Skinner	Aug. 13, "
S. W. ¼ of S. E. ¼	3	"	"	40	Joseph Newlan	March 14, "
Lot No. 4	3	"	"	58. 20		
Lot 5	3	"	"	58. 23	Charles W. Gaston	July 5, "
" 6	3	"	"	54. 78		
S. ½ of N. W. ¼	3	"	"	80		
Lot 1	3	"	"	63. 10	John Richhart	March 30, 1852.
Lot No. 2	3	"	"	26. 75		
N. E. ¼ of S. W.	3	"	"	40	Henare P. Graves	Nov. 26, "
N. fr. ½ N. E. ¼	5	"	"	58. 25	Jesse S. Dicks	July 19, "
S. W. ¼ of N. E. ¼	5	81	26	40	Crawford Cole	March 30, 1852.
S. E. ¼ of N. E. ¼	5	"	"	40	Jesse S. Dicks	July 28, 1852.
N. E. ¼ of S. E. ¼	5	"	"	40	James Morse	Nov. 27, "
S. ½ of S. E. ¼	5	"	"	80	Joseph Newlan	Jan. 22, 1853.
N. W. ¼ of S. E. ¼	5	"	"	40	Daniel J. Skinner	Aug. 13, "
S. ½ of S. W. ¼	5	"	"	80	" " "	" " "
N. E. ¼ of S. W. ¼	5	"	"	40	" " "	" " "
N. W. ¼ of S. W. ¼	5	"	"	40	Almaran Waldo	July 30, "
S. E. ¼ of N. W. ¼	5	"	"	40	Daniel J. Skinner	Aug. 13, "
N. fr. ½ N. W. ¼	5	"	"	57. 01	" " "	" " "
E. ½ of S. E. ¼	9	"	"	80		
S. W. ¼ of S. E. ¼	9	"	"	40	James W. Ince	July 19, 1852.
S. E. ¼ N. W. ¼	9	"	"	40		
N. W. ¼ of S. E. ¼	9	"	"	40		
N. W. ¼ of N. E. ¼	9	"	"	40	Judithan Waldo	Oct. 26, 1853.
N. E. ¼ of N. W. ¼	9	"	"	40	John Newland	" " "
N. W. ¼ of N. W. ¼	9	"	"	40	John Reynolds	Mar. 1, 1853.
S. W. ¼ of N. W. ¼	9	"	"	40	Jeduthan Waldo	July 19, 1852.
N. E. ¼ of S. W. ¼	9	"	"	40	" " "	" " "
N. ½ W. of S. W. ¼	9	"	"	40	William W. Waldo	Oct. 14, 1853.
S. E. ¼ of S. W.	9	"	"	40	Josephus A. Waldo	July 13, "
S. W. ¼ of S. E. ¼	9	"	"	40	Judethan Waldo	Dec. 27, 1852.
N. E. ¼ of S. E. ¼	9	"	"	40	James W. Ince	Jan. 22, 1853.
S. W. ¼ of S. W. ¼	11	"	"	40	John Spear	April 5, "
Lot No. 5	11	"	"	47. 70	" "	July 26, 1852.
" " 6	11	"	"	45. 62	Judith S. Walker	Nov. 19, 1853.
" " 7	11	"	"	38. 50	John W. Morris	May 11, "
" " 8	11	"	"	66	Frederick Shafer	July 22, 1852.
Lot No. 9	11	81	26	40	Frederick Shafer	July 22, 1852.
N. E. ¼ of N. E. ¼	1	82	"	38. 74	John D. Sanford	Nov. 14, 1853.
N. W. fr. ¼ N. E. ¼	1	"	"	39. 22	Samuel Luther	" 22, "
S. E. ¼ of S. E. ¼	1	"	"	40	John D. Sanford	" 14, "
S. ½ of S. W. ¼	1	"	"	80	" " "	" " "
N. E. ¼ of N. E. ¼	3	"	"	42	Robert Meek	Dec. 5, "
N. W. ¼ N. E. ¼	3	"	"	42	Richard Green	March 31, 1852.
E. fr. ½ N. W. ¼	3	"	"	84	James A. Cunningham	Ja'y 12, 1853.
N. W. ¼ N. W. ¼	3	"	"	40	Robert Meek	Dec. 5, "
S. W. ¼ N. E. ¼	3	"	"	40	David Jones	Jan. 1, "
S. E. ¼ S. E. ¼	3	"	"	40	Clark Luther	Feb'y 18, "
W. ½ S. E. ¼	3	"	"	80	John Long	March 31, 1852.
N. E. ¼ S. W. ¼	3	"	"	40	" "	" "
S. E. ¼ S. W. ¼	3	"	"	40	George Hull	" " "
Lot No. 4	5	"	"	49. 45	Washington J. & E. O. Nutts	Oct. 29, 1853.
N. W. ¼ N. E. ¼	5	"	"	38. 49	" " " "	" " "
N. W. ¼ N. W. ¼	5	"	"	37. 99	Robert Meek	Dec. 5, "
N. W. ¼ S. W. ¼	5	"	"	40	" " "	" " "
S. ½ of S. W. ¼	5	"	"	80	Seth Richards	Nov. 8, 1853.
N. ½ of N. E. ¼	7	"	"	80	Randolph Cox	" 10, "
S. ½ of S. E. ¼	7	"	"	80	John J. Baswell	Oct. 31, "
W. ½ of S. E. ¼	7	"	"	80	Henry Kerby	" " "
S. ½ of S. W. ¼	9	"	"	80	Tilman Hornbuckle	Aug. 22, "
N. E. S. W. & lot 3	9	"	"	60. 72	" "	" " "
S. W. N. W. ¼	9	"	"	40	James Berry	Oct. 22, "
N. ½ N. E. ¼ & lot 3	9	"	"	132. 58	Sarah Murphy	Sept. 29, 1852.
S. W. S. E. ¼	9	"	"	40	Robert Jones	Oct. 5, 1853.
S. E. ¼ of S. E. ¼	9	"	"	40	Sanford B. Williams	" 8, "
Lot No. 7	9	82	26	50	David Miller	Nov. 2, 1853.
N. W. ¼ of N. E. ¼	11	"	"	40	John D. Sanford	" " "
S. ½ of N E. ¼	11	"	"	80	Joshua Wheeler	Mc'h 31, 1852.
N. E. ¼ of N. W	11	"	"	40	Jesse Hull	" " "
S. E. ¼ of S. E. ¼	11	"	"	40	William Holdson	" " "
N. W. ¼ of N. W. ¼	11	"	"	40	Richard Green	April 30, 1853.
S. W. ¼ of N. W. ¼	11	"	"	40	George Keigley	Oct. 20, "
N. ½ of S. E. ¼	11	"	"	80	William Halston	Nov. 26, "
W. ½ of N. W. ¼	13	"	"	80	Samuel Luther	March 31, 1852.
N. W. ¼ of S. W	13	"	"	40	" "	" " "
S. W. of S. W. ¼	13	"	"	40	" "	June 28, 1853.
N. E. of S. W. ¼	13	"	"	40	" "	" " "

372 Parts of sec.	Sec.	Town.	R'nge.	Acres.	Grantee.	Date of sale.
E. ½ of N. E. ¼	15	"	"	80	" "	" " "
Lot No. 5	15	"	"	23.15	Daniel J. Skinner	Oct. 5 "
" " 6	15	"	"	54.10	Londa Hurst	" " "
" " 7	15	"	"	46.24	" "	" " "
N. W. fr. ¼ of N. W. ¼	15	"	"	40	" "	" " "
S. E. ¼ of S. E. ¼	15	"	"	40	Call & Christian Anderson	March 17, "
N. ½ of S. E. ¼	15	"	"	80	Greta E. Nelson	" 31, 1852.
N. E. ¼	17	"	"	160	Tilman Hornbucle	Aug. 23, 1853.
N. ½ of S. W. ¼	17	"	"	80	Robert Jones	Oct. 5, "
S. ½ of S. W.	17	"	"	80	" N. "	Aug. 11, "
W. ½ of S. E. ¼	17	"	"	80	" " "	" " "
N. E. ¼ of S. E	17	"	"	40	Robert Meek	Nov. 18, "
N. W. ¼ of N. E. ¼	19	"	"	40	Jacob Rhodes	M'ch 29, "
S. W. ¼ N. E. ¼	19	"	"	40	Perry Scott	Oct. 1, "
S. E. ¼ of N. W. ¼	19	"	"	40	" "	" " "
N. W. ¼ of N. E. ¼	21	82	26	40	Miles White	Nov. 25, 1853.
N. E. ¼ of N. W. ¼	21	82	26	40	Miles White	" " "
S. ½ of N. W. ¼	21	"	"	80	Joseph B. Stewart	" 4, "
S. E. ¼ of S. E. ¼	21	"	"	40	" "	" 22, "
N. W. ¼ of S. W	21	"	"	40	" " "	" " "
N. E. of S. E. ¼	21	"	"	40	Miles White	" 25, "
S. W. ¼ of S. E. ¼	21	"	"	40	Abraham Rhodes	Feb. 11, "
N. W. ¼ of S. E. ¼	21	"	"	40	Joseph H. Rhodes	Oct. 20, "
N. E. ¼ of S. W. ¼	21	"	"	40	" "	" " "
W. ½ of N. E. ¼	23	"	"	80	Henry Graves	M'ch 31, 1852.
W. ½ of N. W. ¼	23	"	"	80	Albert Harris	" " "
W. ½ of S. E. ¼	23	"	"	80	" "	" " "
N. E. S. E. ¼	33	"	"	40	John Anderson	Oct. 7, 1853.
Lot No. 5	27	"	"	49.55	William Nomlan	Mar. 30, "
N. E. ¼ of N. W. ¼	27	"	"	40	" "	" " "
Lot No. 7	27	"	"	36.20	" "	" " "
N. W. ¼ of N. W. ¼	27	"	"	40	" "	Oct. 20, "
Lot No. 6	27	"	"	19.75	P. M. Cassady	Nov. 22, "
" " 3	27	"	"	37.33	John Anderson	Oct. 7, "
" " 2	27	"	"	49.38	Charles J. Anderson	" 1, "
" " 1	27	"	"	27.80	" "	" " "
S. E. ¼ of S. E. ¼	27	"	"	40	" "	" " "
N. E. ¼ of S. E. ¼	27	"	"	40	Robert Meek	Dec. 6, "
S. E. N. E. ¼	29	"	"	40	Elam S. Preston	Sept. 6, 1852.
N. ½ of S. E. ¼	29	"	"	80	David Miller	Jan. 15, 1853.
N. W. ¼ of S. W. ¼	29	"	"	40	Joseph Miller	Oct. 13, "
E. ½ of N. E. ¼	31	"	"	80	Elam S. Preston	Sept. 8, 1852.
N. ½ of N. E. ¼	33	82	26	80	Almaran Waldo	Nov. 25, 1853.
S. ½ of N. W. ¼	33	"	"	80	" "	" " "
N. E. ¼ of N. W. ¼	33	"	"	40	John Blaugher	July 30, 1853.
N. W. ¼ of N. W. ¼	33	"	"	40	Alexander P. Townsend	Oct. 1, "
N. E. ¼ of S. E. ¼	33	"	"	40	Montgomery McCall	March 29, "
S. E. ¼ S. E ¼	33	"	"	40	Crawford Call	" 31, 1852.
S. W. ¼ of S. E. ¼	33	"	"	40	Jesse Dicks	" " "
S. E. ¼	35	"	"	160	Alfred Harris	" " "
N. ½ of S. W. ¼	35	"	"	80	Benjamin Williams	" " "
S. ½ of S. W. ¼	35	"	"	80	Charles Gaston	July 13, 1853.
S. W. ¼	1	82	26	160	Robert Meek	Nov. 18, 1853.
W. ½ of S. E. ¼	1	"	"	80	" "	" " "
W. fr. ½ of N. E. ¼	1	"	"	50.40	" "	" " "
E. fr. ½ of N. W. ¼	1	"	"	50.40	" "	" " "
W. fr. ½ of N. W. ¼	1	"	"	50.40	" "	" " "
W. ½ of N. E. ¼	3	"	"	51.37	John M. Weare	Oct. 11, "
E. fr. ½ of N. W	3	"	"	51.62	Robert Meek	Nov. 26, "
W. fr. ½ of N. W. ¼	3	"	"	51.87	" "	" " "
N. E. ¼ of S. W. ¼	3	"	"	40	" "	" " "
N. W. ¼ of S. W. ¼	3	"	"	40	" "	Dec. 6, "
S. W. ¼ of S. W. ¼	3	"	"	40	" "	Nov. 26, "
S. E. ¼ of S. W. ¼	3	"	"	40	" "	Dec. 5, "
E. fr. ½ of N. E. ¼	5	"	"	53	" "	Nov. 18, "
N. E. ¼ of S. E. ¼	5	"	"	40	Nelson J. Meeker	Oct. 1, "
N. W. ¼ of S. E. ¼	5	"	"	40	John Howser	July 30, "
S. E. ¼ of S. E. ¼	5	"	"	40	John A. McFarland	M'ch 31, 1852.
S. W. ¼	5	"	"	160	Jacob Gutshall	Aug. 29, 1853.
Lot No. 2	7	83	26	43.15	Robert Meek	Nov. 18, 1853.
N. ½ of N. E. ¼	9	"	"	80	Uriah Hull	M'ch 31, 1852.
E. ½ of S. E. ¼	9	"	"	80	James Hull	" " "
S. E. ¼ of N. E. ¼	9	"	"	40	" "	" " "
W. ½ of S. E. ¼	9	"	"	80	Robert A. Weare	Oct. 11, 1853.
S. W. ¼ of N. E. ¼	9	"	"	40	" "	" " "
E. ½ of N. E. ¼	9	"	"	80	James Harlan	Dec. 20, 1852.
W. ½ of N. W. ¼	9	"	"	80	John Johnson	" " "
N. E. ¼ of S. W. ¼	9	"	"	40	Elk H. Kellian	Nov. 4, 1858.
S. E. ¼ of S. W. ¼	9	"	"	40	David A. Kellian	" 17, "
W. ½ of S. W. ¼	9	"	"	80	Robert Meek	" 18, "
N. W. ¼ of N. E. ¼	11	"	"	40	George W. Payne	April 19, "
N. E. ¼ of N. W. ¼	11	"	"	40	" " "	" " "

373 Parts of sec.	Sec.	Town.	R'nge.	Acres.	Grantee.	Date of sale.
N. W. of N. W. ¼	11	"	"	40	Woodson D. Parker	Nov. 17, "
S. E. ¼ of N. W. ¼	11	"	"	40	Robert Meek	Dec. 5, "
N. W. ¼ of S. E. ¼	11	"	"	40	Woodson D. Parker	Mar. 31, 1852.
S. W. ¼ of S. W. ¼	11	"	"	40	George Hull	Dec. 20, 1852.
S. E. ¼ of S. W. ¼	11	"	"	40	John D. Montgomery	Nov. 12, 1853.
N. ½ N. W. ¼	15	"	"	80	Sauise Boone	Dec. 27, 1852.
W. ½ S. W. ¼	15	"	"	80	Robert Meek	" 5, 1853.
N. ½ N. E. ¼	17			80	John Johnson	" 20, 1852.
S. W. N. E. ¼ & lot No. 2	17			71. 45	Robert Meek	" 5, 1853.
Lot No. 8	17			27. 62	Isaac Cooper	" 22, 1853.
N. W. N. W. ¼	17			40	Jacob Crooks	April 19, "
N. fr. ½	19			308. 74	Robert Meek	Dec. 5, "
N. W. N. W. ¼	21			39, 42	J. B. Stewart	" 22, "
Lot 3						
Lot 2	21	83	26	36. 81	Philip Hull	Dec. 27, 1852.
S. W. S. W	21	"	"	40	" "	" " "
N. E. S. E	21	"	"	40	" "	" " "
S. E. S. W	21	"	"	40	" "	Feb. 18, 1853.
W. ½ S. E	21	"	"	80	Thomas Sparks	July 18, 1852.
S. E. S. E	21	"	"	40	" "	" " "
N. ½ N. E	21	"	"	80	John Hoffman	Mar. 31, 1852.
S. ½ N. E	21	"	"	80	Dan'l Eppret	Oct. 1, 1853.
S. W	23	"	"	160	" "	" " "
N. W	23	"	"	160	Sauise Boone	Dec. 27, 1852.
N. W. N. E	23	"	"	40	Robert Meek	" 5, 1853.
S. W. S. E	23	"	"	40	" "	" " "
S. ½ N. E	23	"	"	80	Robert N. Cartwright	Nov. 26, "
N. ½ S. E	23	"	"	80		
S. E. S. E	23	"	"	40	Philip Hall	April 19, "
N. W. N. E	27	"	"	40	James Gilden	Oct. 31, "
S. ½ N. E	27	"	"	80	Robert Meek	Dec. 5, 1853.
N. ½ N. W	27	"	"	80	William Swayne	M'ch 31, 1852.
S. ½ N. W	27	"	"	80	Sam'l Swayne	" " "
S. E. ¼	27	"	"	160	James E. Moss	" " "
S. W	27	"	"	160	" " "	Feb. 18, 1853.
N. ½ N. W	25	"	"	120	Reddick Cartwright	Nov. 4, 1853.
S. E. N. W	25					
S. E. N. E	29	"	"	82. 25	Rober' Meek	Dec. 5, 1853.
Lot 4	29					
E. ½ of S. W. ¼	29	"	"	80		
N. W. S. W	29	"	"	40	William C. Sparks	Nov. 12, 1853.
Lots 8 & 9	29	"	"	69. 66		
E. ½ N. W	31	83	26	80	Robert Meek	Nov. 18, 1853.
N. E	31	"	"	160	Joshua Bennett	M'ch 30, "
S. ½ S. E	31	"	"	80	Robert Meek	Dec. 7, 1853.
N. E. S. E	31	"	"	40		
S. W. S. W	33	"	"	40	Joshua Bennett	M'ch 30, "
Lot No. 6	33	"	"	41	" "	" " "
" " 8	33	"	"	31. 85	" "	Dec. 8, "
" " 2	33	"	"	42. 95	Thomas Edmunds	Nov. 17, "
S. E. S. E	33	"	"	40	W'm Dyer	" " "
N. E. S. E	33	"	"	40	Henry Bean	Feb. 18, "
E. ½ N. E	33	"	"	80	Reddick Cartwright	Nov. 4, "
N. W. N. W	35	"	"	40	Clark Luther	M'ch 31, 1852.
E. ½ N. W	35	"	"	80	" "	" " "
N. W. N. E	35	"	"	40	" "	" " "
N. E. N. E	35	"	"	40	William Dyer	Nov. 25, 1853.
S. W. N. E	35	"	"	40	John Long	Feb. 18, "
S. E. N. E	35	"	"	40	I. H. Cunningham	Jan. 12, "
N. E. S. W	35	"	"	40	Peter Cagle	Nov. 25, "
S. E. S. W	35	"	"	40	William Hall	M'ch 31, 1852.
N. W. S. E	35	"	"	40	John Sturdevant	Feb. 18, 1853.
N. E. S. E	35	"	"	40	John Long	M'ch 31, 1852.
Lots No. 1, 2, & 3	1	83	27	150. 24	John Rose	Oct. 20, 1853.
W. fr. ½ N. W	1	"	"	52. 70	Sam'l B. McCall	Nov. 4, "
Lot No. 4	1	"	"	50. 47	" " "	" " "
S. W. S. W	1	"	"	40	Robert Meek	" 18, "
Lots 7, 8, & 9	1	"	"	119. 56	Christopher Rogers	Dec. 5, "
N. W	11	"	"	160	Hiram Bowman	May 13, "
S. ½ of N. E	11	83	27	80	Robert Meek	Nov. 18, 1853.
N. ½ of S. E	11	"	"	80	" "	" " "
S. W. of S. E	11	"	"	40	" "	" " "
S. W. of N. E	13	"	"	40	Amos M. Rose	Oct. 31, "
N. E. of S. W	13	"	"	40	" " "	" " "
N. W. of S. W	13	"	"	40	" " "	Nov. 18, "
N. E. of N. E	25	"	"	40	William R. Harris	" 25, "
N. W	25	"	"	160	J. B. Stewart	" 13, "
N. ½ of S. W	25	"	"	80	" " "	" " "
N. E. fr. of N. E	5	84	26	59. 21	Thomas Cox	Nov. 4, "
W. fr. ½ N. E	5	"	"	59. 49	Michael Sapp	Sept. 9, "
E. fr. ½ of N. W	5	"	"	59. 77	" "	" " "
W. fr. ½ of N. W	5	"	"	60. 05	" "	" " "

374 Parts of sec.	Sec.	Town.	R'nge.	Acres.	Grantee.	Date of sale.
S. W. ¼ of N. E.	5	"	"	40	George Ward	Nov. 4, "
S. E. of N. W.	5	"	"	40	" "	" " "
S. E. of N. E.	5	"	"	40	Mary Wheeler	Sept. 12, "
N. W. of S. E.	5	"	"	40	" "	" " "
N. E. of S. E.	5	"	"	40	Robert Meek	Nov. 18, "
S. E. of S. W.	5	"	"	40	" "	" " "
S. W. of S. W.	5	"	"	40	George Ward	" 4, "
N. ½ of S. W.	5	"	"	80	Josiah M. Thrift	Oct. 15, "
E. ½ of N. E.	7	"	"	80	J. B. Stewart	Nov. 17, "
N. W. of N. E.	7	"	"	40	" " "	" " "
N. E. of N. W.	7	"	"	40	" " "	" " "
S. E. of S. E.	7	"	"	40	Joshua W. Wheeler	Sept. 12, "
E. ½	9	"	"	320	Alexander H. Woods	Nov. 14, "
S. W. of N. W.	9	"	"	40	Lawrence Wahal	Dec. 17, "
N. ½ of S. W.	9	"	"	80	" "	" " "
S. ½ of S. W.	9	84	26	80	Jeremiah Garden	Nov. 4, 1853
W. ½ of sec.	15	"	"	320	Andrew J. Poe	" 14, "
E. ½ of N. E. ¼	17	"	"	80	Robert L. Tedrick	" 17, "
E. ½ of S. E. ¼	17	"	"	80	" " "	" " "
W. ½ of S. E. ¼	17	"	"	80	Robert Meek	" 18, "
S. W. of N. W.	17	"	"	40	" " "	" " "
E. ½ of S. W.	17	"	"	80	" " "	" " "
S. E. of N. W.	17	"	"	40	" " "	" " "
N. E. of N. W.	17	"	"	40	Frederick Wall	Sept. 1, "
W. ½ of N. W.	17	"	"	80	Joshua W. Wheeler	" 12, "
W. ½ of S. W.	17	"	"	80	" " "	" " "
E. ½ of N. E.	19	"	"	80	William L. Pitcher	" " "
S. W. N. E.	19	"	"	40	" "	" " "
N. W. fr. ¼	19	"	"	152. 58	" "	" " "
N. ½ of S. W.	19	"	"	76. 04	William Thomas	" " "
S. fr. ½ S. W.	19	"	"	75. 88	Jonathan Godden	" " "
S. E.	19	"	"	160	John A. McFarland	Oct. 31, "
N. E.	21	"	"	160	Sam'l Snyder	" " "
N. W.	21	"	"	160	John West	" " "
S. E.	21	"	"	160	Jacob Gutshall	" " "
N. E. of S. W.	21	"	"	40	" "	" " "
S. E. of S. W.	21	"	"	40	John Howser	" " "
W. ½ of S. W.	21	"	"	80	John D. Sandford	Nov. 14, "
S. ½ of N. W.	23	"	"	80	David Shelly	" 24, "
S. W.	23	"	"	160	" "	" " "
W. ½ of S. E.	23	"	"	80	Robert A. Moore	" " "
S. E. ¼	27	84	26	160	Abraham E. Heaslett	Nov. 10, 1853
S. ½ of N. E. ¼	27	"	"	80	" " "	" " "
E. ½ of S. W.	27	"	"	80	" " "	" " "
N. ½ of N. E.	27	"	"	80	John D. Sandford	" 14, "
N. W.	27	"	"	160	" " "	" " "
W. ½ of S. W.	27	"	"	80	John Latham	Sept. 12, "
S. E.	29	"	"	160	Labon "	" " "
E. ½ of N. E.	29	"	"	80	Ezekiel L. Hinton	" " "
N. W. of N. E.	29	"	"	40	" " "	" " "
S. W. of N. E.	29	"	"	40	Benton Post	" " "
E. ½ of S. W.	29	"	"	80	" "	" " "
W. ½ of S. W.	29	"	"	80	William Webster	" " "
N. W.	29	"	"	160	Boone County	" " "
E. ½ of N. E.	31	"	"	80	John Latham	" " "
S. E. of S. E.	31	"	"	40	" "	" " "
N. W. of N. E.	31	"	"	40	Robert Meek	Nov. 18, "
S. fr. ½ of N. W.	31	"	"	76. 5	" "	" " "
Lot No. 1	31	"	"	39. 15	John Rose	" " "
S. E. ¼	33	"	"	160	Michael Meyers	Sept. 12, "
E. ½ of S. W.	33	"	"	80	" "	" " "
S. ½ of N. E.	33	"	"	80	Henry Hoffman	" " "
S. E. of N. W.	33	"	"	40	" "	" " "
N. ½ of N. E.	33	"	"	80	John Latham	" " "
N. E. of N. W.	33	"	"	40	" "	" " "
N. W. of N. W.	33	"	"	40	Benjamin Williams	" " "
S. W. of N. W.	33	"	"	40	J. B. Stewart	Nov. 5, "
S. ½ of S. E.	35	"	"	80	Robert Meek	" 18, "
W. ½ of S. W.	35	"	"	80	James Hall	Sept. 12, "
S. E. of S. W.	35	84	26	40	James Hull	Sept. 12, 1853
S. W. of N. W.	35	"	"	40	James R. Payne	" " "
Lot No. 1	1	84	27	59. 25	Willis L. Defore	" 26, "
" " 2	1	"	"	26. 34	" " "	" " "
" " 3	1	"	"	48. 03	Robert Meek	Nov. 26, "
S. E. of S. W.	3	"	"	40	Andrew Johnson	Sep. 12, "
S. ½ of N. E.	11	"	"	80	Robert Meek	Nov. 18, "
S. E. of N. W.	11	"	"	40	" "	" " "
N. E. of S. W.	11	"	"	40	William Hall	Sep. 12, "
N. E. of S. E.	11	"	"	40	" "	Nov. 26, "
N. W. of S. W.	11	"	"	40	" "	" " "
Lots No. 1, 2, & 3	13	"	"	115. 21	Michael Sapp	Sep. 12, "
" " 4	13	"	"	41. 50	Jeremiah Garden	" " "
" " 5	13	"	"	48. 67	James Carbin	" " "

375 Parts of sec.	Sec.	Town.	R'nge.	Acres.	Grantee.	Date of sale.
N. E. of N. W	13	"	"	40	" "	" " "
Lot No. 6	13	"	"	60. 73	" "	Oct. 29, "
S. W. of N. W	13	"	"	40	W'm. C. Crooks	" " "
Lot No. 7	13	"	"	52. 94	Robert Meek	Dec. 5, "
N. W. of S. W	13	"	"	40	" "	" " "
Lot No. 8	13	"	"	26. 51	Isaac Nutt	Oct. 29, "
S. ½ of S. W	13	"	"	80	" "	Nov. 4, "
S. E. of S. E	15	"	"	40	James Specklimer	Oct. 25, "
S. E. of S. W	15	"	"	40	Elisha "	Sep. 12, "
N. W. fr. ¼	19	"	"	161. 96	William L. Pitcher	" " "
E. ½ of N. E	19	"	"	80	" " "	" " "
S. W. of N. E	19	"	"	40	" " "	" " "
S. W. of S. W	21	"	"	40	Peter Duties	Oct. 25, "
S. E. N. E	21	84	27	40	Robert Meek	Nov. 18, 1853
N. E. of S. E	21	"	"	40	" "	" 26, "
Lots No. 1 & 2	23	"	"	73. 86	James B. Hamilton	Sep. 12, "
N. E of N. W	23	"	"	40	James Specklimin	Oct. 25, "
W. ½ of N. W	23	"	"	80	" "	" " "
Lot No. 3	23	"	"	45. 67	" "	" " "
" " 4	23	"	"	33. 27	" "	" " "
" " 5 &	23	"	"	85. 90	John P. Lens	Nov. 12, "
" " 7	23	"	"	39. 58	John D. Sandford	" 14, "
S. W. of S. E	23	"	"	40	" " "	" " "
E. ½ of S. E	23	"	"	80	Jacob Hoffman	Sep. " 1853
Lot No. 9	23	"	"	39. 81	Robert Meek	Nov. 26, 1853
N. E. of N. E	25	"	"	40	Byram P. Martin	Nov. 25, "
S. E. of N. E	25	"	"	40	James M. Martin	" " "
N. W. of N. E	25	"	"	40	Joshua W. Wheeler	Sept. 12, "
E. ½ of N. W	25	"	"	80	Abram Heaslett	Nov. 10, 1853
W. ½ of N. W	25	"	"	80	William Boone	Oct. 15, 1853
N. E. of S. E	25	"	"	40	William C. Bell	Nov. 12, "
N. W. of S. E	25	"	"	40	William Holmes	Oct. 31, "
N. E. of S. W	25	"	"	40	William Bell	Dec. 7, "
Lot No. 2	25	"	"	31. 70	" "	" " "
S. E. ½ of S. E. ½	27	"	"	40	Robert Meek	Nov. 18, "
N. E. N. W	27	"	"	40	J. B. Stewart	Dec. 2, "
N. E. S. E	27	"	"	40	Sam'l Eccler	Sep. 12, "
Lots No. 1 & 2	27	"	"	75. 53	" "	" " "
" " 1 & 2	35	"	"	74. 89	Robert Meek	Nov. 18, "
" " 3	35	"	"	26. 36	" "	" " "
S. E. ¼	35	"	"	160	John A. McFarlane	Sept. 12, "
S. W. of S. W	17	85	26	40	Jonathan C. James	Dec. 10, 1853
E. ½ of N. E. ¼	19	"	"	80	Robert Meek	Nov. 18, "
E. ½ of N. W	19	"	"	80	Joseph Richardson	" 17, "
N. E. of S. E	19	"	"	40	Tyler Higbee	Oct. 11, "
S. E. of S. E	19	"	"	40	John D. Sandford	Nov. 14, "
N. ½ of N. E	29	"	"	80	Robert Meek	Nov. 26, "
N. E. of N. W	29	"	"	40	" "	" " "
N. E. of S. W	29	"	"	40	" "	" " "
W ½ of N. W	29	"	"	80	" "	" 18, "
S. E. of N. W	29	"	"	40	" "	" " "
S. W. of N. E	29	"	"	40	" "	" " "
N. E. of N. E	29	"	"	40	Willis L. Defore	Sept. 12, "
N. ½ of S. E	29	"	"	80	" " "	" " "
S. E. of S. E	29	"	"	40 }	Henry Friedley	" " "
S. W. of S. E	29	"	"	40 }		
S. E. of N. E	31	"	"	40	Willis L. Defore	" " "
S. E. of S. E	31	"	"	40	William Vonteer	" " "
W. ½ of N. E	31	"	"	80	Robert Meek	Dec. 5, "
W. fr. ½ of N. W	31	"	"	68. 54	" "	" " "
S. E. of N. W	31	"	"	40	Sophia Friedley	Oct. 17, "
S. W. of S. E	31	"	"	40	Robert Meek	Dec. 5, "
S. E. of S. W	31	"	"	40	" "	" " "
N. E	33	"	"	160	Melbern C. Williams	Oct. 14, "
E. ½ of N. W	33	"	"	80	" " "	" " "
S. W. of N. W	33	"	"	40	Sarah Friedley	" 17, "
N. W. of S. W	33	"	"	40	Zachariah Vanteera	Sept. 12, "
E. ½ of S. W	33	"	"	80	Elias Zimmer	Oct. 27, "
N. W. of S. E	33	"	"	40	B. F. Allen	Dec. 17, "
S. ½ of S. E. ¼	33	85	26	80	James M. Stoutz	Nov. 18, 1853
E. ½ of S. E. ¼	1	85	27	80	Robert Meek	" " "
E. ½ of S. W. ¼	1	"	"	80	Thomas C. Kennedy	" 23, "
S. E. of N. E. ¼	3	"	"	40	Ezra Rathburn	Sept. 12, "
N. E. of S. E. ¼	3	"	"	40	" "	" " "
N. W. of N. W. ¼	3	"	"	39. 20	Robert Meek	Nov. 18, "
Lot No. 1	3	"	"	60	" "	" " "
N. E. of N. E. ¼	9	"	"	40	" "	" " "
W. ½ of S. E. ¼	11	"	"	80	William Phipps	" 25, "
S. E. of S. W. ¼	11	"	"	40	" "	" " "
Lot No. 3	11	"	"	34. 85	" "	" " "
Lots 5, 6, & 7	11	"	"	118. 46	John W. Tomlinson	Sept. 12, "
N. E. ¼	13	"	"	160	Thomas C. Kennedy	Nov. 23, "
N. W. of S. E. ¼	13	"	"	40	Robert Meek	" 18, "

376 Parts of sec.	Sec.	Town.	R'nge.	Acres.	Grantee.	Date of sale.
S. E. of S. E.	15	"	"	40	" "	" " "
Lot No. 2	15	"	"	40	" "	" " "
N. E. of N. E. ¼	25	"	"	40	Joseph Richardson	" 26, "
S. E. of S. W. ¼	25	"	"	40	Robert Meek	" 18, "
N. E. of N. W	25	"	"	40	" "	" " "
N. W. of S. E. ¼	25	"	"	40	" "	" 26, "
S. E. of N. W	25	"	"	40	" "	" " "
W. ½ of N. W	25	"	"	80	" "	" " "
Lot No. 5	27	"	"	37. 54	Frederick Schlicht	Sep. 12, "
" " 7	27	"	"	63	Norman C. Averille	Dec. 17, "
S. W. of S. W. ¼	27	"	"	40	Frederick Schlicht	" 10, "
S. E. of N. E. ¼	35	85	27	40	Isam C. Hull	Dec. 13, 1853.
S. W. of N. E. ¼	35	"	"	40	David C. Hull	" 10, "
S. E. of S. E. ¼	35	86	27	40	Andrew Adamson	Oct. 22, "
S. E. of N. W. ¼	35	"	"	40	Andrew J. Johnson	" " "
N. E. of N. W. ¼	35	"	"	40	John Seveenson	" " "
N. ½ of S. E. ¼	35	"	"	80	Robert Meek	Dec. 6, "
S. E. of N. E. ¼	27	"	"	40	Adolphus Hanson	Oct. 22, "
N. E. of N. E. ¼	27	"	"	40	Jonas Eriction	" " "
Lot No. 1	27	"	"	31. 18	Joseph Harden	" " "
" 3 & 4	27	"	"	60. 38	" "	" " "
S. W. ¼ of S. W. ¼	23	"	"	40	Andrew J. Johnson	" " "

To have and to hold the same, with all the privileges and appurtenances thereto belonging, with all the rights, title, and interest that said company has now or may hereafter acquire by virtue of said act of Congress of May 15, 1856, therein, to the State of Iowa and her assigns forever, as fully, to all intents and purposes, as if said land was in fact a part of said Des Moines River grant, and as fully and completely as said State and her assigns could hold and enjoy the same if said company never had or pretended to have any claim thereon, and as if the same had not been certified to the State as Railroad land.

In witness whereof the said Cedar Rapids & Missouri River Railroad Company hath caused this instrument to be signed by its vice-president and secretary, and its corporate seal to be hereunto affixed, at its office in the city of Cedar Rapids, in the State of Iowa, this twenty-second day of February, A. D. 1864.

[L. S.]

W. W. WALKER,
Vice-Pres't C. R. & M. R. R. R. Co.
L. C. PARDEE,
Secretary C. R. & M. R. R. R. Co.

STATE OF IOWA, *Linn County, ss:*

Be it remembered that, on this 22d day of February, A. D. 1864, before me, L. Burnett, a notary public of the State of Iowa, within and for Linn County therein, in person came W. W. Walker, vice-president of the Cedar Rapids and Missouri River Railroad Company, described in the foregoing instrument, and L. C. Pardee, secretary of the same, both of whom are personally known to me to be the identical persons whose names are affixed to the foregoing instrument as the makers thereof; they being also personally known to me to be the vice-president and secretary of the said Cedar Rapids and Missouri River Railroad Company as described above, and acknowledged the said instrument and the execution thereof to be their voluntary act and deed, as such officers, in behalf of said railroad company, and the voluntary act and deed of the said Cedar Rapids and Missouri River Railroad Company, by them as such officers thereunto duly authorized, voluntarily done and executed for the uses and purposes within said instrument mentioned.

377 In testimony whereof I have hereunto set my hand and affixed my notarial seal, in the city of Cedar Rapids, in the county of Linn aforesaid, on the same day and year herein above written.

[L. S.] L. BURNETT, *Notary Public.*

STATE OF IOWA, *Linn County, ss:*

Before me, L. Burnett, a notary public in and for said county, in said State, on the 22d day of February, in the year of our Lord one thousand eight hundred and sixty-four, personally appeared W. W. Walker, vice-president, and L. C. Pardee, secretary of The Cedar Rapids and Missouri River Railroad Company, of full age, who, being sworn according to law, on their oaths say that they are the officers of said company as above mentioned, and that the annexed seal is the seal of The Cedar Rapids and Missouri River Railroad Company.

W. W. WALKER,
Vice-Pres't C. R. & M. R. R. R. Co.

[L. S.] L. C. PARDEE,
Secretary C. R. & M. R. R. R. Co.

Sworn and subscribed the date above written, before me, L. Burnett, notary public as aforesaid, by the said W. W. Walker and L. C. Pardee; as witness my hand and seal notorial, hereunto set and affixed in said county

[L. S.] L. BURNETT, *Notary Public.*

STATE LAND OFFICE, IOWA,
Des Moines, 7th February, 1862.

I, A. B. Miller, register of the State land office, do hereby certify that the within and foregoing is a true list all the lands sold by the State to individuals prior to the 19th day of January, A. D. 1854, belonging to the Des Moines River grant, lying within the fifteen-mile limits of the Cedar Rapids and Missouri River Railroad line, and set forth accurately, the date of sale and the name of party purchasing, so far as is shown by the records now on file in this office.

Witness my hand the date above written.

A. B. MILLER,
Register.

RECORDER'S OFFICE, BOONE COUNTY, IOWA,
Boonsboro, Feb. 20th, 1864.

I, C. W. Hamilton, recorder of Boone County, Iowa, do hereby certify that I have searched the records of said county, and find no mortgage or encumbrance whatever made by the Cedar Rapids and Missouri River Railroad Company upon any lands in said county.

Given at my office the day and year above written.

C. W. HAMILTON.
Recorder Boone Co., Iowa.

[Revenue, 10 cents, stamp.]

STATE LAND OFFICE, *Des Moines, Iowa.*

I, J. A. Harvey, register of the State land office of Iowa, certify that the foregoing is a true and correct copy of the release or conveyance by the Cedar Rapids and Missouri Railroad Company to the State of

378 Iowa, of the lands therein described, together with the several

certificates thereunto attached, as the same appears filed and of record in this office.

Witness my hand and official seal this 29th day of March, 1866.

[SEAL.] J. A. HARVEY,
Register.

(Endorsed as follows:) Des Moines River lands, sold prior to Jan'y 19, 1854, to or by State.

(No. 7)

GENERAL LAND OFFICE, *April 11th*, 1865.

I, Jos. S. Wilson, Act'g Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to three, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

SEAL OF THE UNITED STATES GENERAL LAND OFFICE.

JO'. S. WILSON,
Act'g Commissioner of the General Land Office.

Iowa Central Air Line Railroad.—List of lands in the district of lands subject to sale at Dubuque within the six-mile limits, granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa in alternate sections, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad, "from Lyons City, northwesterly, to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River."

North of base line, and east of fifth principal meridian. Iowa Central Air-Line Railroad. Railroad list. Six-miles limits. Office at Dubuque.

No.	Parts of section.	Section.	Township.	Range.	Acres.
1	S. E. ¼ of N. W. ¼	29	85	1	40.00
2	N. E. ¼ of N. E. ¼	31	85	1	40.00
3	S. W. ¼ of S. W. ¼	33	85	1	40.00
4	Frac. on R. bank of river	13	84	3	2.40
	North of the base line and west of fifth principal meridian.				
5	N. E. ¼ of N. W. ¼	23	85	1	40.00
6	S. E. ¼ of S. W. ¼	27	85	1	40.00
7	N. W. ¼ of S. W. ¼	33	84	2	40.00
8	N. E. ¼ of S. E. ¼	31	84	3	40.00
9	Lot No. 1	1	84	5	27.90
10	N. W. ¼ of N. E. ¼	13	85	5	40.00
11	Lots Nos. 7 & 8	35	85	5	78.75
12	S. W. ¼ of N. W. ¼	19	85	8	42.55
13	S. W. ¼ of N. E. ¼	29	85	8	40.00
14	Lot No. 1	29	85	8	1.06
15	S. ½ of N. W. ¼	15	84	10	80.00
16	N. W. ¼ of N. W. ¼	1	84	13	43.82
17	S. E. ¼ of N. W. ¼	1	84	13	40.00
18	N. E. ¼ of N. E. ¼	9	84	13	40.00
19	S. W. ¼ of S. E. ¼	9	84	13	40.00
20	S. E. ¼ of N. E. ¼	11	84	13	40.00
379					
21	S. E. ¼ of N. W. ¼	13	84	14	40.00
22	N. W. ¼ of S. E. ¼	13	84	14	40.00

23	N. W. ¼ of S. W. ¼	13	84	14	40.00
24	S. E. ¼ of N. W. ¼	15	84	14	40.00
25	S. W. ¼ of S. W. ¼	19	84	14	50.37
26	N. E. ¼ of S. W. ¼	23	84	14	40.00
27	S. W. ¼ of N. E. ¼	27	84	14	40.00
28	N. E. ¼ of S. E. ¼	27	84	14	40.00
29	N. W. ¼ of S. W. ¼	27	84	14	40.40
30	N. W. ¼ N. E. ¼	29	84	14	40.00
31	S. E. ¼ of N. W. ¼	29	84	14	40.00
32	S. W. ¼ of S. W. ¼	33	84	14	40.00
33	S. W. ¼ of S. E. ¼	35	84	14	40.00
34	N. W. ¼ of N. E. ¼	3	84	15	43.06
35	S. W. ¼ of N. E. ¼	13	84	15	40.00
36	N. E. ¼ of N. W ¼	13	84	15	40.00
37	S. E. ¼ of S. E. ¼	19	84	16	40.00
38	N. W. ¼ of S. W. ¼	31	84	16	39.83
39	S. W. ¼ of S. W. ¼	33	84	16	40.00
40	N. E. ¼ of N. E. ¼	35	84	16	40.00
41	Southwest quarter	25	85	16	160.00
42	N. E. ¼ of S. E. ¼	33	85	16	40.00
	Total				1,809.74

Making a total of one thousand eight hundred and nine acres and seventy-four hundredths of an acre.

(Within the six-mile limits.)

GENERAL LAND OFFICE, *December 23d*, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land within the six-mile limits, granted to the State of Iowa by the act of Congress approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the Iowa Central Air-Line Railroad within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington on the day and year first hereinabove written.

THE SEAL OF THE UNITED STATES GENERAL LAND OFFICE.

THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
December 27th, 1858.

Approved, subject to the conditions and rights above mentioned.
J. THOMPSON, *Secretary.*

(Endorsed:) Read on the hearing, & filed Oct. 19, 1870. George B. Corkhill, clerk.

(No. 8.)

GENERAL LAND OFFICE, *April 11th*, 1865.

I, Jos. S. Wilson, Act'g Commissioner of the General Land
380 Office, do hereby certify that the annexed, on pages one to five, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

{ U. S. G. L. OFFICE. }

JO. S. WILSON,
Act'g Commissioner of the General Land Office.

Iowa Central Air-Line Railroad.—List of lands in the district of lands subject to sale at Dubuque, outside of the six and within the fifteen mile limits of the reserve to satisfy the grant made to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections, in width, on each side of the railroad," from Lyons City northwesterly, to a point of intersection with the main line of the Iowa Central Air-Line Railroad near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the State to the Missouri River," and in lieu of the lands in alternate sections designated by odd numbers within said six sections in width, which the United States had legally "sold or otherwise appropriated, or to which the rights of pre-emption have attached."

North of base line and east of fifth principal meridian. Iowa Central Air-Line Railroad. Railroad list. 15 miles limits. Office at Dubuque.

No.	Parts of sections.	Section.	Township.	Range.	Acres.
1	S. W. ¼ of N. E. ¼	13	85	3	40.00
2	N. E. ¼ of N. W. ¼	23	85	3	40.00
3	N. E. ¼ of N. W. ¼	13	86	3	40.00
4	N. W. ¼ of S. W. ¼	7	85	4	35.25
5	N. W. ¼ of N. W. ¼	31	85	4	36.09
6	N. E. ¼ of S. W. ¼	29	85	6	40.00
	North of base line and west of fifth principal meridian:				
7	N. W. ¼ of S. W. ¼	13	85	1	40.00
8	N. W. ¼ of S. E. ¼	23	86	1	40.00
9	N. E. ¼ of N. W. ¼	31	86	2	40.00
10	N. W. ¼ of S. E. ¼	13	86	3	40.00
11	S. E. ¼ of S. E. ¼	25	86	3	40.00
12	S. W. ¼ of S. W. ¼	35	86	3	40.00
13	Lot No. 2	7	85	5	59.00
14	S. W. ¼ of S. W. ¼	19	85	5	36.35
15	E. ½ of S. E. ¼	3	86	5	80.00
16	Lot No. 2	11	85	6	38.00
17	Frac. on W. bank of river	11	85	6	.16
18	Frac. on left bank river	15	85	6	2.27
19	N. W. ¼ of S. W. ¼	19	86	6	35.75
20	Lot No. 1	33	86	6	57.75
21	N. E. ¼ of S. E. ¼	29	86	10	40.00
22	N. E. ¼ of S. W. ¼	29	86	10	40.00
23	E. ½ of S. E. ¼	31	86	10	80.00
24	S. E. ¼ of N. E. ¼	21	85	12	40.00
25	S. W. ¼ of S. E. ¼	21	85	12	40.00
26	N. E. ¼ of S. E. ¼	15	86	12	40.00
27	N. W. ¼ of S. E. ¼	9	85	13	40.00
28	N. W. ¼ of S. E. ¼	5	86	14	40.00
29	N. W. ¼ of N. W. ¼	11	86	14	40.00
30	W. ½ of S. W. ¼	15	86	14	80.00
31	W. ½ of S. W. ¼	19	86	15	91.74
32	E. ½ of S. E. ¼	31	86	15	80.00
33	N. W. ¼ of N. E. ¼	5	85	16	40.14
34	S. W. ¼ of S. E. ¼	5	85	16	40.00
35	S. E. ¼ of S. E. ¼	13	85	16	40.00
36	N. E. ¼ of N. E. ¼	1	86	16	38.67
37	N. ½ of N. W. ¼	3	86	16	71.44
38	N. E. ¼ of N. E. ¼	7	86	16	40.00
39	W. ½ of N. W. ¼	19	86	16	81.10
40	N. W. ¼ of N. W. ¼	21	86	16	40.00
381					
41	E. ½ of S. E. ¼	21	86	16	80.00
42	S. W. ¼ of N. W. ¼	1	86	17	40.00
43	N. ½ of N. E. ¼	3	86	17	68.84
44	N. ½ of N. W. ¼	3	86	17	69.08
45	S. W. ¼ of N. W. ¼	3	86	17	40.00

46	N. E. ¼ of N. E. ¼	5	86	17	34.52
47	W. ½ of N. E. ¼	5	86	17	74.57
48	N. ½ of N. W. ¼	5	86	17	69.29
49	S. E. ¼ of N. W. ¼	5	86	17	40.00
50	S. W. ¼ of S. W. ¼	9	86	17	40.00
51	S. W. ¼ of N. E. ¼	15	86	17	40.00
52	S. W. ¼ of S. W. ¼	15	86	17	40.00
53	W. ½ of N. W. ¼	19	86	17	94.65
54	W. ½ of S. W. ¼	19	86	17	96.15
55	S. W. ¼ of S. W. ¼	23	86	17	40.00
56	S. ½ of S. E. ¼	27	86	17	80.00
57	W. ½ of S. E. ¼	31	86	17	80.00
58	N. W. ¼ of S. E. ¼	33	86	17	40.00
59	S. W. ¼ of S. W. ¼	33	86	17	40.10
60	N. W. ¼ of S. E. ¼	35	86	17	40.00
61	S. W. ¼ of S. W. ¼	19	87	17	44.10
62	W. ½ of S. W. ¼	31	87	17	96.66
63	S. W. ¼ of N. W. ¼	31	87	17	46.40
64	N. W. ¼ of N. W. ¼	31	87	18	45.12
65	N. ½ of N. E. ¼	1	86	18	77.67
66	N. ½ of N. W. ¼	1	86	18	77.81
67	S. ½ of S. E. ¼	5	86	18	80.00
68	N. E. ¼ of N. E. ¼	11	86	18	40.00
69	N. W. ¼ of N. W. ¼	13	86	18	40.00
70	S. ½ of N. E. ¼	19	86	18	80.00
71	N. ½ of N. E. ¼	25	86	18	80.00
72	N. W. ¼ of S. E. ¼	35	86	18	40.00
73	S. W. ¼ of N. E. ¼	29	87	18	40.00
74	S. W. ¼ of S. E. ¼	29	87	18	40.00
75	S. E. ¼ of N. E. ¼	31	87	18	40.00
76	E. ½ of N. E. ¼	33	87	18	80.00
77	E. ½ of S. E. ¼	35	87	18	80.00
	Total				3,998.57

Making a total of three thousand nine hundred and ninety-eight acres and fifty-seven hundredths of an acre.

(Between the six and fifteen mile limits.)

GENERAL LAND OFFICE, *December 23rd*, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing on pages one to four, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits, under the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State;" the said selections being from the lands of the United States, in alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width, on each side of the Iowa Central Air-Line Railroad, and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of preemption had legally attached, prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and
382 caused the seal of the General Land Office to be affixed, at the City of Washington, on the day and year first herein above-written.

SEAL OF THE UNITED STATES GENERAL LAND OFFICE.

THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
December 27th, 1858.

Approved, subject to the conditions and rights above mentioned.
J. THOMPSON, *Secretary.*

(Endorsed:) Read on the hearing and filed Oct. 19, 1870. George B. Corkhill, clerk.

(Indorsed:) W. Baker v. Jesse Williams.

(No. 9.)

GENERAL LAND OFFICE, *April 11th*, 1865.

I, Jos. S. Wilson, Act'g Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to six, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington on the day and year above written.

{ U. S. G. L. OFFICE. }

JO. S. WILSON,
Act'g Commissioner of the General Land Office.

Iowa Central Air-Line Railroad.—List of lands in the district of lands subject to sale at Fort Des Moines, within the six-mile limits granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in alternate sections designated by odd numbers for six sections in width, on each side of the railroad, "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line running as near as practicable to the forty-second parallel, across the said State to the Missouri River.

North of base line and east of fifth principal meridian. Iowa Central Air-Line Railroad list. 6-mile limits. Office Fort Des Moines district.

No.	Parts of section.	Section.	Township.	Range.	Acres.
1	N. ½ of S. E. ¼	11	82	5	80.00
	West of fifth principal meridian:				
2	N. E. ¼ of N. W. ¼	7	83	2	40.60
3	S. E. ¼ of S. W. ¼	17	83	2	40.00
4	S. ½ of S. W. ¼	17	83	11	80.00
5	S. ½ of N. W. ¼	13	83	14	80.00
6	N. E. ¼ of N. E. ¼	5	84	17	56.80
7	S. W. ¼ of S. W. ¼	5	84	17	40.00
8	S. E. ¼ of N. E. ¼	9	85	17	40.00
9	S. W. ¼ of S. E. ¼	21	85	17	40.00
10	N. E. ¼ of S. E. ¼	29	85	17	40.00
11	N. E. ¼ of S. E. ¼	31	85	17	40.00
12	S. E. ¼ of N. E. ¼	9	83	18	40.00
13	N. W. ¼ of S. E. ¼	15	83	18	40.00
14	S. E. ¼ of S. W. ¼	5	83	19	40.00
15	W. ½ of N. W. ¼	7	83	20	57.88
383					
16	S. E. ¼ of N. W. ¼	23	84	20	40.00
17	N. E. ¼ of N. W. ¼	31	84	20	40.00
18	W. ½ of N. W. ¼	31	84	20	48.20
19	W. ½ of S. W. ¼	31	84	20	51.08
20	S. W. ¼ of S. W. ¼	35	84	20	40.00
21	N. W. ¼ of S. E. ¼	9	85	20	40.00
22	N. W. ¼ of N. E. ¼	21	85	20	40.00

23	E. ½ of N. W. ¼	1	83	21	50.77
24	N. E. ¼ of S. E. ¼	3	83	21	40.00
25	W. ½ of S. W. ¼	3	83	21	80.00
26	S. W. ¼ of S. E. ¼	21	83	21	40.00
27	S. W. ¼ of S. W. ¼	21	83	21	40.00
28	N. E. ¼ of S. W. ¼	23	83	21	40.00
29	N. E. ¼ of S. W. ¼	3	84	21	40.00
30	N. E. ¼ of S. E. ¼	7	84	21	40.00
31	S. W. ¼ of S. E. ¼	7	84	21	40.00
32	S. W. ¼	7	84	21	131.58
33	S. W. ¼ of N. W. ¼	15	84	21	40.00
34	N. W. ¼ of S. W. ¼	15	84	21	40.00
35	N. E. ¼ of S. E. ¼	21	84	21	40.00
36	S. W. ¼ of N. E. ¼	27	84	21	40.00
37	S. W. ¼ of N. W. ¼	27	84	21	40.00
38	N. E. ¼ of S. E. ¼	35	84	21	40.00
39	S. W. ¼ of S. E. ¼	35	84	21	40.00
40	S. E. ¼ of N. W. ¼	33	85	21	40.00
41	N. W. ¼ of N. W ¼	9	84	22	40.00
42	N. E. ¼ of S. W. ¼	9	84	22	40.00
43	S. W. ¼ of S. E. ¼	23	84	23	40.00
44	N. W. ¼ of N. E. ¼	15	83	23	40.00
45	N. W. ¼ of N. E. ¼	9	84	22	40.00
46	S. E. ¼ of S. W. ¼	11	84	23	40.00
47	S. E. ¼ of N. W. ¼	23	84	23	40.00
48	N. E. ¼ of S. E. ¼	33	85	23	40.00
49	S. E. ¼ of N. W. ¼	35	85	23	40.00
50	S. W. ¼ of N. E. ¼	3	84	24	40.00
51	N. E. ¼ of S. E. ¼	3	84	24	40.00
52	S. E. ¼ of N. E. ¼	7	84	24	40.00
53	N. E. ¼ of S. W. ¼	33	85	24	40.00
54	S. E. ¼	13	83	25	160.00
55	N. ½ of S. W. ¼	15	83	25	80.00
56	N. W. ¼ of N. E. ¼	23	83	25	40.00
57	S. E. ¼ of N. E. ¼	23	83	25	40.00
58	N. E. ¼ of N. E. ¼	5	84	25	57.96
59	N. E. ¼ of N. W. ¼	23	84	25	40.00
60	N. E. ¼ of S. E. ¼	25	85	25	40.00
61	S. W. ¼ of S. E. ¼	29	85	25	40.00
62	N. E. ¼ of N. E. ¼	35	85	25	40.00
63	S. W. ¼ of S. W. ¼	35	85	25	40.00
64	S. E. ¼ of S. W. ¼	1	83	28	40.00
65	S. W. ¼ of S. E. ¼	7	83	28	40.00
66	N. E. ¼ of S. E. ¼	13	83	28	40.00
67	N. ½ of N. W. ¼	19	83	28	82.68
68	N. W. ¼ of S. W. ¼	21	83	28	40.00
69	S. W. ¼ of N. E. ¼	23	83	28	40.00
70	S. E. ¼ of N. E. ¼	27	83	28	40.00
71	S. W. ¼ of N. W. ¼	31	85	28	44.69
72	W. ½ of S. W. ¼	31	85	28	89.56
73	N. E. ¼	1	83	29	106.88
74	E. ½ of N. W. ¼	1	83	29	53.77
75	S. E. ¼ of N. W. ¼	7	83	29	40.00
76	S. E. ¼ of N. E. ¼	19	83	29	40.00
77	N. W. ¼ of S. E. ¼	21	83	29	40.00
78	S. ½ of S. W. ¼	27	83	29	80.00
79	N. E. ¼ of N. E. ¼	1	84	29	54.95
80	E. ½ of N. E. ¼	3	84	29	92.44
81	N. W. ¼ of N. E. ¼	3	84	29	52.45
82	N. E. ¼ of N. E. ¼	5	84	29	51.52
83	N. E. ¼ of N. W. ¼	5	84	29	53.21
84	S. ½ of N. W. ¼	5	84	29	80.00
85	S. W. ¼ of N. W. ¼	7	84	29	37.24
86	W. ½ of S. W. ¼	7	84	29	74.29
87	N. W. ¼ of N. E. ¼	9	84	29	40.00
88	S. ½	27	85	29	320.00
89	S. ½, and N. W. ¼	29	85	29	480.00
90	All	31	85	29	638.98
91	All	33	85	29	640.00
92	All	35	85	29	640.00
93	N. ½ of N. E. ¼	1	84	30	118.65
384					
94	N. ½ of N. W. ¼	1	84	30	112.85
95	N. E. ¼	3	84	30	189.92
96	S. ½ of N. W. ¼	3	84	30	80.00
97	N. ½	5	84	30	375.71
98	E. ½ of S. E. ¼	7	84	30	80.00
99	Lot No. 1	7	84	30	51.50
100	N. W. ¼ of S. W. ¼	7	84	30	38.88
101	S. W. ¼ of N. W. ¼	9	84	30	40.00
102	S. W. ¼ of N. W. ¼	15	84	30	40.00
103	S. E. ¼ of N. W. ¼	33	84	30	40.00
104	E. ½ of N. W. ¼	19	85	30	80.00
105	S. ½ of	19	85	30	314.85
106	E. ½ of N. E. ¼	19	85	30	80.00
107	N. W. ¼ of N. E. ¼	19	85	30	40.00

108	W. ½ of S. E. ¼	21	85	30	80. 00
109	S. E. ¼ of S. E. ¼	21	85	30	40. 00
110	E. ½ of S. W. ¼	21	85	30	80. 00
111	N. W. ¼ of S. W. ¼	21	85	30	40. 00
112	S. W. ¼ of N. E. ¼	29	85	30	40. 00
113	N. E. ¼ of N. E. ¼	29	85	30	40. 00
114	S. E. ¼ of N. E. ¼	31	85	30	40. 00
115	W. ½ of N. W. ¼	31	85	30	80. 40
116	W. ½ of S. W. ¼	31	85	30	82. 80
117	N. E. ¼	33	85	30	160. 00
118	Lots 1, 2, 4, 5	1	84	31	216. 42
119	W. ½ of S. W. ¼	1	84	31	80. 00
120	N. ½ of N. E. ¼	3	84	31	110. 77
121	N. E. ¼ of N. W ¼	3	84	31	55. 67
122	S. E. ¼ of N. W. ¼	7	84	31	40. 00
123	W. ½ of N. W. ¼	7	84	31	58. 10
124	N. W. ¼ of S. W. ¼	7	84	31	28. 88
125	N. ½ of N. E. ¼	13	84	31	80. 00
126	S. W. ¼ of N. W. ¼	25	84	31	40. 00
127	N. E. ¼ of N. W. ¼	27	84	31	40. 00
128	E. ½ of S. E. ¼	7	85	31	80. 00
129	S. W. ¼ of S. E. ¼	7	85	31	40. 00
130	N. ½ of S. W. ¼	7	85	31	72. 84
131	W. ½ of N. W. ¼	19	85	31	67. 33
132	S. E. ¼ of N. W. ¼	19	85	31	40. 00
133	N. ½ of S. W. ¼	19	85	31	74. 28
134	S. W. ¼ of N. E. ¼	23	85	31	40. 00
135	N. E. ¼ of S. E. ¼	23	85	31	40. 00
136	N. W. ¼ of N. W. ¼	25	85	31	40. 00
137	N. E. ¼ of S. W. ¼, & S. W. ¼ of S. W. ¼	25	85	31	80. 00
138	W. ½ of N. W. ¼	27	85	31	80. 00
139	N. E. ¼ of S. E. ¼	27	86	31	40. 00
140	N. E. ¼ of N. E. ¼	29	85	31	40. 00
141	E. ½ of S. E. ¼	29	85	31	80. 00
142	N. W. ¼ of S. E. ¼	29	85	31	40. 00
143	N. E. ¼	35	85	31	160. 00
144	W. ½ of S. E. ¼	35	85	31	80. 00
145	S. E. ¼ of S. E. ¼	35	85	31	40. 00
146	S. E. ¼ of N. W. ¼	35	85	31	40. 00
147	S. ½ of S. W. ¼	35	85	31	80. 00
148	N. W. ¼ of N. E. ¼	5	85	32	39. 41
149	S. E. ¼	5	85	32	160. 00
150	S. W. ¼ of N. E. ¼	13	85	32	40. 00
151	N. W. ¼ of N. W. ¼	13	85	32	40. 00
152	W. ½ of N. W. ¼	19	85	32	71. 76
153	W. ½ of S. W. ¼	19	85	32	72. 60
154	S. ½ of N. E. ¼	23	85	32	80. 00
155	S. E. ¼ of N. E. ¼	25	85	32	40. 00
156	S. W. ¼ of N. W. ¼	11	84	33	40. 00
157	S. W. ¼	13	84	33	160. 00
158	N. ½ of N. E. ¼	3	85	33	72. 77
159	N. ½ of N. W. ¼	3	85	33	71. 29
160	N. E. ¼	13	85	33	160. 00
161	N. E. ¼ of N. E. ¼	21	85	33	40. 00
162	S. E. ¼ of N. E. ¼	21	85	33	40. 00
163	N. W. ¼ of N. E. ¼	21	85	33	40. 00
164	S. W. ¼ of N. E. ¼	21	85	33	40. 00
165	N. E. ¼ of N. W. ¼	21	85	33	40. 00
166	N. E. ¼ of S. E. ¼	21	85	33	40. 00
167	W. ½ of N. W. ¼	29	85	33	80. 00
	Total				12, 824. 01

385 Making a total of twelve thousand eight hundred and twenty four acres and one hundredth of an acre.
(Within the six-mile limits.)

GENERAL LAND OFFICE, *October 19th*, 1859.

I, Samuel A. Smith, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to five, inclusive, is a true and correct list of the tracts of land within the six-mile limits, granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and lying in the district of lands subject to sale at Fort Des Moines, being the vacant and unappropriated lands in alternate sections designated by odd numbers, for six sections in width, on each side

of the road from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River, and known as the Iowa Central Air Line Railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

SEAL UNITED STATE' GENERAL LAND OFFICE.

S. A. SMITH,
Commissioner.

DEPARTMENT OF THE INTERIOR,
October 24th, 1859.

Approved, subject to the conditions and rights above mentioned.
J. THOMPSON,
Secretary.

(Endorsed:) Read on the hearing, and filed October 19, 1870. George B. Corkhill, clerk.

(No. 10.)

GENERAL LAND OFFICE, *April 11th*, 1865.

I, Jos. S. Wilson, Act'g Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to eight, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

SEAL OF THE UNITED STATES GENERAL LAND OFFICE.

JO. S. WILSON,
Act'g Commissioner of the General Land Office.

386 *Iowa Central Air-Line Railroad.—List of lands in the district of lands subject to sale at Fort Des Moines, outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress, approved May 15th 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tier of sections, within six sections in width, on each side of the railroad, "from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River," and in lieu of the lands in alternate sections designated by odd numbers, within said six sections in width, which the United States had legally "sold or otherwise appropriated, or to which the rights of pre-emption have attached."*

North of base line and east of fifth principal meridian. Iowa Central Air Line Railroad list. 15 miles limits. Office at Fort Des Moines.

No.	Parts of section.	Section.	Township.	Range.	Acres.
1	S. W. ¼ of S. E. ¼	7	82	1	40.00
2	Lot No. 11, (on island)	17	82	1	.39
3	N. W. ¼	27	81	2	160.00

	West of fifth principal meridian:				
4	N. E. ¼ of N. E. ¼	15	82	1	40.00
5	N. W. ¼ of S. E. ¼	19	83	3	40.00
6	S. W. ¼ of S. W. ¼	33	82	5	40.00
7	S. W. ¼ of N. E. ¼	3	82	13	40.00
8	N. E. ¼ of S. E. ¼	9	82	13	40.00
9	E. ½ of N. W. ¼	15	82	13	80.00
10	S. W. ¼ of S. W. ¼	31	83	13	49.53
11	S. W. ¼ of S. E. ¼	29	83	17	40.00
12	S. W. ¼ of N. E. ¼	31	83	17	40.00
13	S. E. ¼ of N. W. ¼	1	82	18	40.00
14	S. W. ¼ of S. E. ¼	1	82	18	40.00
15	N. W. ¼ of S. W. ¼	1	82	18	40.00
16	S. W. ¼ of S. W. ¼	5	82	18	40.00
17	S. ½ of S. W. ¼	33	83	18	80.00
18	N. ½ of N. W. ¼	1	85	18	79.57
19	N. E. ¼ of S. W. ¼	1	85	18	40.00
20	N. ½ of N. W. ¼	3	85	18	80.26
21	S. W. ¼ of N. E. ¼	5	85	18	44.00
22	S. W. ¼ of S. E. ¼	5	82	19	40.00
23	S. E. ¼ of N. E. ¼	17	82	19	40.00
24	W. ½ of S. W. ¼	19	83	19	71.76
25	S. E. ¼ of N. E. ¼	1	82	21	40.00
26	N. E. ¼ of S. E. ¼	1	82	21	40.00
27	S. W. ¼ of S. W. ¼	1	82	21	40.00
28	N. W. ¼ of S. E. ¼	3	82	21	40.00
29	N. E. ¼	9	82	21	160.00
30	N. E. ¼ of N. W. ¼	9	82	21	40.00
31	S. W. ¼ of N. E. ¼	9	82	21	40.00
32	N. W. of S. W. ¼	21	82	21	40.00
33	N. E. ¼ of S. W. ¼	25	83	21	40.00
34	N. E. ¼ of S. W. ¼	35	83	21	40.00
35	S. W. ¼ of S. W. ¼	35	83	21	40.00
36	N. ½ of N. E. ¼	1	85	21	74.44
37	N. ½ of N. W. ¼	1	85	21	73.38
38	N. E. ¼ of N. E. ¼	5	85	21	33.95
39	N. ½ of N. W. ¼	5	85	21	67.48
40	W. ½ of N. W. ¼	7	85	21	51.44
41	S. W. ¼ of S. W. ¼	23	85	21	40.00
42	S. W. ¼ of N. E. ¼	25	82	23	40.00
43	N. E. ¼ of N. E. ¼	5	85	23	35.56
44	N. E. ¼ of S. E. ¼	11	85	23	40.00
45	N. E. ¼ of S. W. ¼	17	85	23	40.00
46	N. E. ¼ of N. E. ¼	21	85	23	40.00
47	N. W. ¼ of S. W. ¼	23	85	23	40.00
48	S. E. ¼ of N. W. ¼	3	82	24	40.00
49	S. E. ¼ of N. W. ¼	29	82	24	40.00
387					
50	N. W. ¼ of S. E. ¼	29	82	24	40.00
51	N. E. ¼ of S. W. ¼	35	82	24	40.00
52	N. ½ of N. E. ¼	5	85	24	71.08
53	N. ½ of N. W. ¼	5	85	24	70.10
54	N. E. ¼ of S. E. ¼	5	85	24	40.00
55	N. E. ¼ of S. E. ¼	9	85	24	40.00
56	S. E. ¼ of S. W. ¼	15	85	24	40.00
57	S. W. ¼ of S. W. ¼	19	85	24	40.00
58	N. W. ¼ of S. E. ¼	21	85	24	40.00
59	S. E ¼ of S. W. ¼	27	85	24	40.00
60	N. E. ¼ of S. W. ¼	9	82	25	40.00
61	N. ½ of S. W. ¼	11	82	25	80.00
62	N. E. ¼ of N. E. ¼	21	82	25	40.00
63	N. E. ¼ of N. W. ¼	23	82	25	40.00
64	N. E. ¼ of N. E. ¼	3	85	25	35.00
65	N. E. ¼ of N. E. ¼	7	85	25	40.00
66	S. W. ¼ of N. W. ¼	7	85	25	45.12
67	S. E. ¼ of S. E. ¼	21	85	25	40.00
68	S. W. ¼ of S. W. ¼	21	85	25	40.00
69	N. ½ of N. E. ¼ & S. E. ¼ of N. E. ¼	1	85	26	114.05
70	N. W. ¼ of N. W. ¼	1	85	26	37.00
71	N. E. ¼ of N. W. ¼	3	85	26	37.31
72	S. W. ¼ of N. W. ¼	3	81	27	40.00
73	N. E. ¼ of N. E. ¼	23	81	27	40.00
74	S. E. ¼ of S. W. ¼	23	81	27	40.00
75	S. W. ¼ of N. E. ¼	19	82	27	40.00
76	N. E. ¼ of S. E. ¼	27	82	27	40.00
77	S. W. ¼ of S. E. ¼	7	81	28	40.00
78	N. W. ¼ of N. W. ¼	5	85	28	40.00
79	W. ½ of S. W. ¼	5	85	28	80.00
80	N. E. ¼ of N. E. ¼	7	85	28	40.00
81	N. W. ¼ of S. W. ¼	7	85	28	40.97
82	W. ½ of N. W. ¼	9	85	28	80.00
83	S. E. ¼ of S. W. ¼	9	85	28	40.00
84	S. W. ¼ of N. W. ¼	15	85	28	40.00
85	N. W. ¼ of S. E. ¼	17	85	28	40.00
86	S. E. ¼ of S. E. ¼	17	85	28	40.00

87	S. ½ of S. W. ¼	17	85	28	80.00
88	S. ½ of N. W. ¼	19	85	28	82.37
89	W. ½ of S. W. ¼	19	85	28	85.49
90	N. E. ¼ of N. E. ¼	21	85	28	40.00
91	S. ½ of N. E. ¼	21	85	28	80.00
92	W. ½ of S. E. ¼	21	85	28	80.00
93	S. W. ¼ of N. E. ¼	23	85	28	40.00
94	N. ½ of N. W. ¼	23	85	28	80.00
95	N. W. ¼ of S. E. ¼	23	85	28	40.00
96	E. ½ of S. W. ¼	23	85	28	80.00
97	N. E. ¼ of N. W. ¼	27	85	28	40.00
98	W. ½ of S. E. ¼	27	85	28	80.00
99	N. ½ of S. W. ¼	27	85	28	80.00
100	N. W. ¼ of S. W. ¼	29	85	28	40.00
101	S. W. ¼ of N. W. ¼	3	81	29	40.00
102	N. W. ¼ of N. W. ¼	1	85	29	42.79
103	S. E. ¼ of S. W. ¼	1	85	29	40.00
104	N. ½ of N. E. ¼	3	85	29	85.92
105	N. ½ of N. W. ¼	3	85	29	80.00
106	N. E. ¼ of N. E. ¼	5	85	29	41.68
107	N. W. ¼ of N. W. ¼	5	85	29	41.40
108	N. W. ¼ of S. W. ¼	7	85	29	37.07
109	S. E. ¼ of N. W. ¼	13	85	29	40.00
110	S. W. ¼ of S. W. ¼	13	85	29	40.00
111	N. E. ¼ of N. E. ¼	15	85	29	40.00
112	W. ½ of N. W. ¼	19	85	29	80.00
113	W. ½ of S. W. ¼	19	85	29	80.00
114	N. ½ and S. E. ¼	21	85	29	480.00
115	N. ½ of S. W. ¼	21	85	29	80.00
116	E. ½	23	85	29	320.00
117	W. ½ of N. W. ¼	23	85	29	80.00
118	S. E. ¼ of N. W. ¼	23	85	29	40.00
119	N. E. ¼ of S. W. ¼	23	85	29	40.00
120	All	25	85	29	640.00
121	N. ½	27	85	29	320.00
122	N. E. ¼	29	85	29	160.00
123	N. ½ of N. E. ¼	5	81	30	70.81
124	N. ½ of N. W. ¼	5	81	30	70.45
125	S. E. ¼ of S. E. ¼	5	82	30	40.00
126	N. W. ¼ of N. W. ¼	19	82	30	41.97
127	S. W. ¼ of N. E. ¼	25	82	30	40.00
128	S. E. ¼ of N. E. ¼	27	82	30	40.00
129	S. ½ of S. W. ¼	27	82	30	80.00
130	S. W. ¼ of S. W. ¼	27	83	30	40.00
131	S. ½ of S. E. ¼	29	83	30	80.00
388					
132	S. W. ¼ of S. W. ¼	31	83	30	43.50
133	S. E. ¼	1	85	30	160.00
134	N. W. ¼	1	85	30	166.24
135	W. ½ of S. W. ¼	1	85	30	80.00
136	N. E. ¼ of S. W. ¼	1	85	30	40.00
137	All of	3	85	30	644.62
138	N. E. ¼ of N. W. ¼	5	85	30	39.78
139	E. ½	5	85	30	320.08
140	N. ½ of S. W. ¼	5	85	30	80.00
141	N. E. ¼	7	85	30	160.00
142	S. W. ¼	7	85	30	152.26
143	N. ½ of N. W. ¼	7	85	30	75.79
144	E. ½ of S. E. ¼	7	85	30	80.00
145	S. W. ¼ of S. E. ¼	7	85	30	40.00
146	All	9	85	30	640.00
147	All	11	85	30	640.00
148	All	13	85	30	640.00
149	N. ½	15	85	30	320.00
150	S. W. ¼	15	85	30	160.00
151	E. ½ of N. E. ¼	17	85	30	80.00
152	S. W. ¼ of N. E. ¼	17	85	30	40.00
153	S. W. ¼ of N. W. ¼	17	85	30	40.00
154	N. E. ¼ of N. W. ¼	17	85	30	40.80
155	E. ½ of S. E. ¼	17	85	30	80.00
156	N. W. ¼ of S. E. ¼	17	85	30	40.00
157	S. W. ¼	17	85	30	160.00
158	N. E. ¼	21	85	30	160.00
159	N. E. ¼ of N. W. ¼	21	85	30	40.00
160	S. W. ¼ of S. W. ¼	5	82	31	40.00
161	S. W. ¼ of N. W. ¼	7	82	31	44.37
162	S. W. ¼ of S. W. ¼	7	82	31	44.14
163	S. W. ¼ of S. E. ¼	13	82	31	40.00
164	S. ½	21	82	31	320.00
165	N. W. ¼ of N. E. ¼	25	82	31	40.00
166	W. ½ of S. W. ¼	25	82	31	80.00
167	N. E. ¼ of S. W. ¼	25	82	31	40.00
168	W. ½ of N. E. ¼	27	82	31	80.00
169	S. E. ¼ of N. E. ¼	27	82	31	40.00
170	N. E. ¼ of S. E. ¼	27	82	31	40.00
171	S. ½ of S. E. ¼	27	82	31	80.00

172	N. W. ¼ of N. W. ¼	33	82	31	40.00
173	N. E. ¼ of S. W. ¼	35	82	31	40.00
174	S. W. ¼ of S. W. ¼	17	83	31	40.00
175	W. ½ of S. W. ¼	19	83	31	81.98
176	N. W. ¼ of N. W. ¼	31	83	31	41.74
177	W. ½ of S. W. ¼	31	83	31	86.13
178	All	1	85	31	637.68
179	N. ½ and S. E. ¼	3	85	31	479.04
180	E. ½ of S. W. ¼	3	85	31	80.00
181	N. W. ¼ of S. W. ¼	3	85	31	40.00
182	W. ½ and S. E. ¼	5	85	31	476.76
183	W. ½ of N. E. ¼	5	85	31	78.49
184	S. E. ¼ of N. E. ¼	5	85	31	40.00
185	N. W. ¼	7	85	31	155.11
186	N. W. ¼ of N. E. ¼	7	85	31	40.00
187	N. E. ¼	9	85	31	160.00
188	S. W. ¼	9	85	31	160.00
189	E. ½ of N. W. ¼	9	85	31	80.00
190	S. W. ¼ of N. W. ¼	9	85	31	40.00
191	E. ½ of S. E. ¼	9	85	31	80.00
192	N. W. ¼ of S. E. ¼	9	85	31	40.00
193	W. ½ of N. E. ¼	13	85	31	80.00
194	N. E. ¼ of N. E. ¼	13	85	31	40.00
195	N. E. ¼ of N. W. ¼	13	85	31	40.00
196	N. E. ¼ of S. E. ¼	13	85	31	40.00
197	E. ½ of S. W. ¼	13	85	31	80.00
198	N. ½	1	82	32	350.42
199	S. E. ¼	1	82	32	160.00
200	N. ½	3	82	32	344.90
201	E. ½ of S. W. ¼	3	82	32	80.00
202	N. W. ¼ of S. W. ¼	3	82	32	40.00
203	N. ½ of N. E. ¼	5	82	32	94.38
204	N. ½ of N. W. ¼	5	82	32	93.96
205	S. ½	5	82	32	320.00
206	S. W. ¼	7	82	32	165.28
207	N. W. ¼ of S. E. ¼	9	82	32	40.00
208	N. W. ¼	11	82	32	160.00
209	N. E. ¼ of S. E. ¼	11	82	32	40.00
210	S. W. ¼ of S. W. ¼	11	82	32	40.00
389					
211	E. ½ of S. W. ¼	11	82	32	80.00
212	N. ½ of N. E. ¼	17	82	32	80.00
213	W. ½ of N. E. ¼	19	82	32	80.00
214	S. W. ¼	19	82	32	167.24
215	N. E. ¼	21	82	32	160.00
216	S. W. ¼	21	82	32	160.00
217	S. ½ of N. E. ¼	25	82	32	80.00
218	E. ½ of S. E. ¼	25	82	32	80.00
219	E. ½ of N. E. ¼	27	82	32	80.00
220	N. ½	19	83	32	323.59
221	N. W. ¼ of S. E. ¼	19	83	32	40.00
222	S. W. ¼	19	83	32	164.05
223	N. W. ¼	27	83	32	160.00
224	W. ½ and N. E. ¼	31	83	32	497.50
225	S. W. ¼ of S. E. ¼	31	83	32	40.00
226	N. E. ¼ of S. E. ¼	31	83	32	40.00
227	E. ½	33	83	32	320.00
228	S. E. ¼ of S. W. ¼	33	83	32	40.00
229	S. E. ¼ of N. E. ¼	35	83	32	40.20
230	N. ½ of N. E. ¼	1	82	33	99.00
231	N. ½ of N. W. ¼	1	82	33	100.20
232	W. ½ of N. W. ¼	1	83	33	53.05
233	N. W. ¼	3	83	33	114.47
234	W. ½ of N. E. ¼	3	83	33	56.28
235	N. W. ¼ of N. E. ¼	15	83	33	40.00
236	W. ½ of N. W. ¼	19	84	33	70.37
237	E. ½ of N. W. ¼	31	84	33	80.00
	Total				22,887.74

Making a total of twenty-two thousand eight hundred and eighty-seven acres and seventy-four one-hundredths of an acre.

(Between the six and fifteen mile limits.)

GENERAL LAND OFFICE, *October 19th*, 1859.

I, Samuel A. Smith, Commissioner of the General Land Office, do hereby certify that the foregoing, *one* pages one to seven, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits, under

the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and lying in the district of lands subject to sale at Fort Des Moines, the said selections being from the lands of the United States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width, on each side of the railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel, across said State to the Missouri River, and known as the "Iowa Central Air Line Railroad," and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

{SEAL OF THE UNITED STATES GENERAL LAND OFFICE.}

S. A. SMITH,
Commissioner.

390 DEPARTMENT OF THE INTERIOR,
October 24th, 1859.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON,
Secretary.

(Endorsed:) Read on the hearing, and filed October 19, 1870. George B. Corkhill, cl'rk.

(Indorsed:) W'm Baker v. Jesse Williams. Read on the hearing, & filed October 19, 1870. George B. Corkhill.

(No. 11.)

GENERAL LAND OFFICE, *April 11th*, 1865.

I, Jos. S. Wilson, Act'g Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to three, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

{SEAL OF THE UNITED STATES LAND OFFICE.}

JO. S. WILSON,
Act'g Commissioner of the General Land Office.

Iowa Central Air-Line Railroad.—List of lands in the district of lands subject to sale at Fort Dodge, within the six-mile limits, granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad, "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad," near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River.

North of base line and west of fifth principal meridian. Iowa Central Air-Line Railroad list. Six-mile limits. Office at Fort Dodge.

No.	Parts of section.	Section.	Township.	Range.	Acres.
1	N. W. ¼	31	86	32	148.00
2	W. ½ of S. W. ¼	31	86	32	68.00
3	S. E. ¼ of	21	86	33	160.00
4	S. E. ¼ of S. W. ¼	21	86	33	40.00
5	E. ½ of S. E. ¼	29	86	33	80.00
6	E. ½ of N. W. ¼	33	86	33	80.00
	Total				576.00

Making a total of five hundred and seventy-six acres.
(Within the six-mile limits.)

GENERAL LAND OFFICE, *December 23d*, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land within the six-mile
391 limits granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width, on each side of the Iowa Central Air-Line Railroad within the State of Iowa. And they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto set my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

SEAL OF THE UNITED STATES LAND OFFICE.

THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
December 27th, 1858.

Approved, subject to the conditions and rights above mentioned.
J. THOMPSON,
Secretary.

(Endorsed:) Read on the hearing and filed October 19, 1870. George B. Corkhill, cl'k.

(Indorsed:) W'm Baker v. Jesse Williams.

GENERAL LAND OFFICE, *April 11th*, 1865.

I, Jos. S. Wilson, Act'g Commissioner General Land Office, do hereby certify that the annexed, on pages one to nine, inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

SEAL OF THE U. S. G. L. OFFICE.

JO. S. WILSON,
Act'g Commissioner of the General Land Office.

392 *Iowa Central Air-Line Railroad.—List of lands in the district of lands subject to sale at Fort Dodge, outside of the six and within the fifteen miles limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress, approved May, 15th 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad, "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line, as near as practicable to the forty-second parallel, across the said State to the Missouri River," and in lieu of the lands in alternate sections designated by odd numbers, within said six sections in width, which the United States had legally "sold or otherwise appropriated, or to which the rights of pre-emption have attached."*

North of base line and west of fifth principal meridian. Iowa Central Air-Line Railroad. Railroad list. 15-miles limits. Office at Fort Dodge.

No.	Parts of section.	Section.	Township.	Range.	Acres.
1	N. W. ¼ of N. W. ¼	5	86	19	39.96
2	N. E. ¼	19	86	20	160.00
3	S. ½ of S. W. ¼	31	87	20	55.89
4	W. ½ of N. W. ¼	33	87	20	80.00
5	N. E. ¼ of	3	86	21	158.88
6	N. ½ of S. W. ¼	3	86	21	80.00
7	S. W. ¼	5	86	21	160.00
8	W. ½ of N. W. ¼	7	86	21	46.34
9	S. E. ¼ of S. W. ¼	7	86	21	40.00
10	W. ½ of S. W. ¼	7	86	21	45.84
11	W. ½ of N. W. ¼	15	86	21	80.00
12	E. ½ of S. W. ¼	17	86	21	80.00
13	S. W. ¼ of S. W. ¼	17	86	21	40.00
14	W. ½ of N. W. ¼	19	86	21	46.68
15	W. ½ of S. W. ¼	19	86	21	46.72
16	S. W. ¼ of S. E. ¼	27	86	21	40.00
17	S. E. ¼ of N. W. ¼	31	86	21	40.00
18	W. ½ of N. W. ¼	31	86	21	46.32
19	Whole	7	86	22	624.58
20	Whole	9	86	22	640.00
21	Whole	11	86	22	640.00
22	Whole	13	86	22	640.00
23	Whole	15	86	22	640.00
24	Whole	17	86	22	640.00
25	Whole	19	86	22	624.98
26	Whole	21	86	22	640.00
27	West half	23	86	22	320.00
28	Whole	27	86	22	640.00
29	Whole	29	86	22	640.00
30	Whole	31	86	22	627.16
31	Whole	33	86	22	640.00
32	Whole	35	86	22	640.00
33	N. W. ¼ of S. E. ¼	15	86	23	40.00
34	N. E. ¼ of S. E. ¼	19	86	23	40.00
35	W. ½ of S. E. ¼	33	86	23	80.00
36	N. W. ¼	15	96	24	116.48
37	N. E. ¼ of N. W. ¼	17	86	24	40.00
38	S. ½ of N. W. ¼	17	86	24	80.00
39	S. W. ¼	17	86	24	160.00
40	S. W. ¼; N. E. ¼ of N. W. ¼	19	86	24	205.50
41	S. ½ of N. W. ¼	19	86	24	82.48
42	S. W. ¼ of S. E. ¼	19	86	24	40.00

43	W. ½ of N. E. ¼	29	86	24	80.00
44	W. ½ of S. E. ¼	29	86	24	80 00
45	S. ½ of N. E. ¼	31	86	24	80.00
46	W. ½ and S. E. ¼	31	86	34	495.12
47	N. ½ of S. E. ¼	13	86	25	80.00
48	N. ½ of S. W. ¼	13	86	25	80.00
49	S. E. ¼ of S. W. ¼	13	86	25	40.00
50	S. ½ of N. E. ¼	13	86	25	80.00
51	S. ½ of N. W. ¼	13	86	25	80.00
52	E. ½ of N. E. ¼	25	86	25	80.00
53	S. W. ¼ of N. E. ¼	25	86	25	40.00
54	N. W. ¼ of S. E. ¼	25	86	25	40.00
393					
55	S. ½ of S. E. ¼	25	86	25	80.00
56	N. W. ¼ of S. W. ¼	27	86	25	40.00
57	N. E. ¼ of N. W. ¼	29	86	25	40.00
58	N. E. ¼ of N. E. ¼	13	86	26	40.00
59	S. W. ¼ of N. E. ¼	13	86	26	40.00
60	S. ½ and W. ½ of N. W. ¼	13	86	26	400.00
61	N. ½ of N. E. ¼	23	86	26	80.00
62	S. ½ of N. E. ¼	23	86	26	80.00
63	N. ½ of N. W. ¼	23	86	26	80.00
64	N. E. ¼ of S. E. ¼	23	86	26	40.00
65	S. E. ¼ of S. E. ¼	25	86	26	40.00
66	W. ¼ of S. W. ¼	25	86	26	80.00
67	S. E. ¼ of S. W. ¼	25	86	26	40.00
68	N. E. ¼	25	86	26	160.00
69	S. ½ of S. E. ¼	27	86	26	80.00
70	Whole	35	86	26	640.00
71	N. E. ¼ of N. E. ¼	19	86	28	40.00
72	S. ½ of N. E. ¼	19	86	28	80.00
73	W. ¼ of S. E. ¼	19	86	28	80.00
74	S. W. ¼ of S. W. ¼	19	86	28	41.26
75	W. ½ of N. W. ¼	29	86	28	80.00
76	E. ½ of S. E. ¼	29	86	28	80.00
77	N. E. ¼ of S. W. ¼	29	86	28	40.00
78	W. ¼ of S. W. ¼	29	86	28	80.00
79	W. ½ of N. E. ¼	31	86	28	80.00
80	N. E. ¼ of N. W. ¼	31	86	28	40.00
81	S. ½ of N. W. ¼	31	86	28	81.77
82	N. W. ¼ of S. E. ¼	31	86	28	40.00
83	S. ½ of S. E. ¼	31	86	28	80.00
84	S. W. ¼	31	86	28	163.96
85	W. ½ of N. W. ¼	33	86	28	80.00
86	W. ½ of S. W. ¼	33	86	28	80.00
87	S. ½ of N. E. ¼	7	86	29	80.00
88	S. ½ of N. W. ¼	7	86	29	75.92
89	S. E. ¼	7	86	29	160.00
90	E. ½ of S. W. ¼	7	86	29	80.00
91	N. W. ¼ of S. W. ¼	7	86	29	36.13
92	S. W. ¼	9	86	29	160.00
93	S. ½ of N. W. ¼	9	86	29	80.00
94	S. E. ¼ of S. E. ¼	9	86	29	40 00
95	S. E. ¼ of S. W. ¼	13	86	29	40.00
96	N. ½ of	15	86	29	329.00
97	N. E. ¼ of S. E. ¼	15	86	29	40.00
98	S. ½ of S. W. ¼	15	86	29	80.00
99	N. E. ¼ of S. W. ¼	15	86	29	40.00
100	W. ½ of S. W. ¼	15	86	29	80.00
101	Whole	17	86	29	640.00
102	S. ½ of N. E. ¼	19	86	29	80.00
103	S. E. ¼ of N. W. ¼	19	86	29	40.00
104	W. ½ of N. W.	19	86	29	72.84
105	S. ½ of	19	86	29	312.91
106	Whole	21	86	29	640.00
	Am't carried forw'd				18,247.79
	Amount bro't forw'd				18,247.79
107	E. ½ of S. E. ¼	23	86	29	80.00
108	S. W. ¼ of S. E. ¼	23	86	29	40.00
109	N. W. ¼ of N. W. ¼	25	86	29	40.00
110	S. ½ of N. W. ¼	25	86	29	80.00
111	N. E. ¼ and S. ½	25	86	29	480.00
112	N. W. ¼ of N. E. ¼	27	86	29	40.00
113	E. ½ of N. E. ¼	27	86	29	80.00
114	N. W. ¼ and S ½	27	86	29	480.00
115	East half	29	86	29	320.00
116	N. E. ¼ of N. W. ¼	29	86	29	40.00
117	W. ½ of N. W. ¼	29	86	29	80.00
118	N. E. ¼ of S. W. ¼	29	86	29	40.00
119	W. ½ of S. W. ¼	29	86	29	80.00
120	North half	31	86	29	315.79
121	N. ½ of S. E. ¼	31	86	29	80.00
122	E. ½ of S. W. ¼	31	86	29	80.00
23	N. W. ¼ of S. W. ¼	31	86	29	38.84

124	Whole	33	86	29	640.00
125	East half	35	86	29	320.00
126	N. W. ¼ of N. W. ¼	35	86	29	40.00
127	E. ½ of N. W. ¼	35	86	29	80.00
128	E. ½ of S. W. ¼	35	86	29	80.00
129	S. ½ of S. E. ¼	3	86	30	80.00
130	S. W. ¼	3	86	30	160.00
131	South half	5	86	30	320.00
132	East half	7	86	30	320.00
133	E. ½ of S. W. ¼	7	86	30	80.00
134	N. ½ of N. W. ¼	7	86	30	77.79
135	North half	9	86	30	320.00
136	N. E. ¼ of S. E. ¼	9	86	30	40.00
137	W. ½ of S. E. ¼	9	86	30	80.00
138	S. W. ¼	9	86	30	160.00
139	South half	11	86	30	320.00
140	S. ½ of N. E. ¼	11	86	30	80.00
141	S. ½ of N. W. ¼	11	86	30	80.00
142	Whole	13	86	30	640.00
143	Whole	15	86	30	640.00
144	N. E. ¼ of N. W. ¼	17	86	30	40.00
145	W. ½ of N. W. ¼	17	86	30	80.00
146	N. W. ¼ of S. W. ¼	17	86	30	40.00
147	S. ½ of S. W. ¼	17	86	30	80.00
148	East half	17	86	30	320.00
149	N. E. ¼, and E. ½ of N. W. ¼	19	86	30	240.00
150	E. ½ of S. E. ¼	19	86	30	680.00
151	Whole	21	86	30	640.00
152	Whole	23	86	30	40.00
153	S. E. ¼ of N. W. ¼	25	86	30	40.00
154	N. ½ of N. W. ¼	25	86	30	80.00
155	N. E. ¼ and S. ½	25	86	30	480.00
156	North half	27	86	30	320.00
157	Southwest quarter	27	86	30	160.00
394					
158	N. E. ¼ of S. E. ¼	57	86	30	40.00
159	W. ½ of S. E. ¼	27	86	30	80.00
160	N. E. ¼ of N. E. ¼	29	86	30	40.00
161	W. ½ of N. E. ¼	29	86	30	80.00
162	N. W. ¼ and S. ½	29	86	30	480.00
163	East half	31	86	30	320.00
164	N. E. ¼ of N. W. ¼	31	86	30	40.00
165	W. ½ of N. W. ¼	31	86	30	69.62
166	N. W. ¼ of S. W. ¼	31	86	30	34.95
167	S. E. ¼ of S. W. ¼	31	86	30	40.00
168	Whole	33	86	30	640.00
169	East half	35	86	30	320.00
170	Northwest quarter	35	86	30	160.00
171	N. E. ¼ of S. W. ¼	35	86	30	40.00
172	N. W. ¼ of S. W. ¼	35	86	30	40.00
173	S. W. ¼ of S. W. ¼	35	86	30	40.00
174	Whole	1	86	31	647.92
175	Whole	3	86	31	648.06
176	Whole	5	86	31	653.66
177	North half	7	86	31	304.80
178	Whole	9	86	31	640.00
179	Whole	11	86	31	640.00
180	Whole	13	86	31	640.00
181	Whole	15	86	31	640.00
182	Whole	17	86	31	640.00
183	Whole	19	86	31	610.40
184	Whole	21	86	31	640.00
185	Whole	23	86	31	640.00
186	Whole	25	86	31	640.00
187	Whole	27	86	31	640.00
188	Whole	29	86	31	640.00
189	Whole	31	86	31	608.70
190	Whole	33	86	31	640.00
191	Whole	35	86	31	640.00
192	South half	27	87	31	320.00
193	Whole	29	87	31	640.00
194	Whole	31	87	31	612.94
195	Whole	33	87	31	640.00
196	South half	35	87	31	320.00
197	Whole	1	86	32	647.98
198	N. W. ¼ of N. W. ¼	5	86	32	37.64
199	S. ½ and N. W. ¼	7	86	32	450.76
200	E. ½ of N. E. ¼	11	86	32	80.00
201	N. E. ¼ of S. E. ¼	11	86	32	40.00
202	N. E. ¼ of S. W. ¼	13	86	32	40.00
203	North half	15	86	32	320.00
204	N. E. ¼ of N. W. ¼	17	86	32	40.00
205	N ½ of N. E. ¼	17	86	32	80.00
206	W. ½ of N. W. ¼	19	86	32	66.37
207	W. ½ of S. W. ¼	19	86	32	68.79
208	South half	7	87	32	298.71

209	Whole	17	87	32	640.00
210	Whole	19	87	32	605.92
211	Whole	21	87	32	640.00
212	Whole	23	87	32	640.00
395					
213	Whole	25	87	32	640.00
214	Whole	27	87	32	640.00
215	Whole	29	87	32	640.00
216	Whole	31	87	32	606.20
217	Whole	33	87	32	640.00
218	Whole	35	87	32	64.00
219	N. ½ of N. W. ¼	1	86	33	74.25
220	S. E. ¼ of N. E. ¼	1	86	33	40.00
221	N. ¼ of N. E. ¼	1	86	33	74.43
222	E. ½ of S. E. ¼	1	86	33	80.00
223	Whole	13	86	33	640.00
224	S. ½ of N. E. ¼	23	86	33	80.00
225	South half	3	87	33	320.00
226	Whole	5	87	33	699.58
227	Whole	7	87	33	609.04
228	Whole	9	87	33	640.00
229	Whole	11	87	33	640.00
230	N. ½ and S. W. ¼	13	87	33	480.00
231	Whole	15	87	33	640.00
232	Whole	17	87	33	640.00
233	W. ½ of N. W. ¼	19	87	33	61.70
234	W. ½ of S. W. ¼	19	87	33	59.98
235	N. W. ¼ of N. E. ¼	21	87	33	40.00
236	N. E. ¼ of N. E. ¼	23	87	33	40.00
237	N ½ of N. E. ¼	25	87	33	80.00
238	S. E. ¼ of N. E. ¼	33	87	33	40.00
	Total				59,072.60

Making a total of fifty-nine thousand and seventy-two acres and sixty hundredths of an acre.

(Between the six and fifteen mile limits.)

GENERAL LAND OFFICE,
December 23rd, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office' do hereby certify that the foregoing *one* pages one to eight, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa outside of the six and within the fifteen mile limits, under the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to *to* aid in the construction of certain railroads in said State," the said selections being from the lands of the United States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the Iowa Central Air-Line Railroad, and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State inured under said grant. And they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

SEAL OF THE UNITED STATES GENERAL LAND OFFICE.

THOMAS A. HENDRICKS,
Commissioner.

396 DEPARTMENT OF THE INTERIOR,
December 27th, 1858.

Approved, subject to the condition and rights above mentioned.
J. THOMPSON,
Secretary.

(Endorsed:) Read on the hearing, & filed Oct. 19, 1870. George B. Corkhill, clerk.

This indenture, made this 3d day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and The De' Moine' Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said De' Moine' Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, does hereby sell, grant, bargain, and convey to the said De' Moine' Navigation and Railroad Company the following referred to and described lands, to wit:

The northwest quarter of the northeast quarter of section three, and the east half of the southeast quarter of section one, in township sixty-seven north, of range nine west, containing one hundred and twenty acres. And also, the southeast quarter of the northwest quarter of section twenty-nine, and the southeast quarter of the northeast quarter of section thirty-three, in township sixty-eight north, of range seven west, containing eighty acres. And also, the northeast quarter of the southwest quarter of section twenty-nine, and the northeast quarter, and the northwest quarter of the southeast quarter, and the southwest quarter, and the southwest quarter of the northwest quarter of section thirty-five, in township sixty-eight north, of range nine west, containing four hundred and forty acres. And also, the southeast quarter of the southeast quarter of section nine; and the southeast quarter of southwest quarter of section fifteen; and the north half of the southeast quarter of section nineteen; and the northwest quarter of the northeast quarter of section twenty-one; and the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section twenty-nine; and also the northwest quarter of the northeast quarter, and the southeast quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section thirty-three, in township sixty-eight north, of range ten west, containing four hundred acres. And also, the south half of the northwest quarter of section twenty-three, in township sixty-nine north, of range nine west, containing eighty acres. And also, the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section twenty-nine, in township sixty-nine north, of range ten west, containing eighty acres. And also, the southwest quarter of the northeast quarter, and the north half and the southwest quarter of the southeast quarter, and the south half, and the northeast quarter of the southwest quarter, and the south half and the northeast fractional quarter of the northwest quarter of section three; and also the north fractional half, and the southeast quarter of the northeast quarter, and the east half and the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter, and the northwest fractional quarter of section five; and the west half of the northeast quarter, and the west half of the southeast quarter, and the northeast quarter

of the southwest quarter, and the southwest quarter of the south-
397 west quarter, and the southeast quarter of the northwest quarter, and the northwest quarter of the northwest quarter of section nine; and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section eleven; and the south half of the northeast quarter, and the northeast quarter of southeast quarter of section fifteen; and the northeast quarter of the northeast quarter of section seventeen, in township sixty-nine north, of range eleven west, containing one thousand four hundred and forty-nine acres and ninety-eight hundredths of an acre. And also, the northeast fractional quarter of the northeast quarter, and the south half of the northeast quarter, and the north half of the southeast , and the northwest fractional quarter of the northwest quarter of section one, in township sixty-nine north, of range twelve west, containing two hundred and forty-one acres and seventy-four hundredths of acre. And also, the northwest quarter of the southeast quarter of section seven, and the northeast quarter of the northeast quarter of section nine; and the northwest quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section fifteen, and the northeast quarter of the northeast quarter of section twenty-three, in township seventy north of range ten, containing two hundred acres. And also, the north half of the northeast quarter, and the north half of the southeast quarter, and the southwest quarter of the southeast quarter, and the southwest quarter, and the south half of the northwest fractional quarter of section nineteen; and the southwest quarter of the southwest quarter of section twenty-one; and the southwest quarter of the northeast quarter, and the north half of the southeast quarter, and the northeast quarter of the southwest quarter, and the south half and the northwest quarter of the northwest quarter of section twenty-seven; and the east half of the northeast quarter, and the east half of the southeast quarter, and the north half and the southwest quarter of the southwest quarter, and the northwest quarter of section twenty-nine; and the north half, and the southeast quarter, and the east half of the southwest quarter, and the northwest fractional quarter of the southwest quarter of section thirty-one; and the southeast quarter, and the west half of the southwest quarter, and the southeast of the northwest quarter of section thirty-three, in township seventy north, of range eleven west, containing two thousand and ninety-three acres and eighty-three hundredths of an acre. And also, the north fractional half of the northwest quarter of section three; and the north half of the southeast quarter of section five; and the west half of the southeast quarter, and west fractional half of the southwest quarter, and the southwest fractional quarter of the northwest quarter of section seven; and the northwest quarter of the southeast quarter, and the southwest quarter of the southwest quarter of section nine; and the southwest quarter of the southwest quarter of section eleven; and the southeast quarter of the southeast quarter of section thirteen; and the north half of the southeast quarter, and the north half of the southwest quarter, and northwest quarter of the northeast quarter of section fifteen; and the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section seventeen; and the west half of the northeast quarter, and the north half of the southeast quarter, and the north half of the southwest quarter, and (the north half of the southwest quarter,) and the northwest fractional quarter of section nineteen; and the southeast quarter of the northwest quarter of section twenty one: and the east half of the northeast quarter, and the southeast quarter, and the

east half of the southwest quarter, and the northwest quarter of the
398 southwest quarter, and the southwest quarter of the northwest quarter of section twenty-three; and the west half of the northeast quarter, and the south half of the southeast quarter of section twenty-five; and the southeast quarter of the southwest quarter of section twenty-seven; and the northwest quarter of the northeast quarter, and the west half of the southeast quarter, and the north half of the southwest quarter, and the south half of the northwest quarter, and the northwest quarter of the *the* northwest quarter of section twenty-nine; and the southwest quarter of the northwest quarter of section thirty-three; and the northwest quarter of the southeast quarter, and the northwest quarter of the southwest quarter of section thirty-five, in township seventy north, of range twelve west, containing twenty-three hundred and four acres and thirty-five hundredths of an acre. And also, the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter, and the south half of the southwest quarter, and the northeast quarter of the southwest quarter of section one; and the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section three; and the southeast quarter of the southeast quarter, and the southwest quarter of the northwest quarter, and the north fractional half of the northwest quarter of section five; and the north half of the northeast quarter, and the northeast quarter of the northwest quarter of section nine; and the south half of the northeast quarter of section eleven; and the west half of the southwest quarter, and the southwest quarter of the northwest quarter of section thirteen, in township seventy north, of range thirteen west, containing seven hundred and sixty-eight acres and twenty-one hundredths of an acre:

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the De' Moine' Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of *of* the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand, at the city of Des Moines, the day and year *above* first above written, and the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor June 10th, 1858, and was recorded in Des Moines River records, book A, pages 1, 2, 3, & 4, June 15th, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made the third day of May, one thousand eight hundred & fifty-eight, by and between the State of Iowa, party of the first part, and the De' Moine' Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part.

and in pursuance of the contracts and agreements between the
399 State of Iowa and the said Des Moines Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain, and convey to the Des Moines Navigation and Railroad Company the following-described lands, to wit:

The west half of the northeast quarter, and the southwest fractional of the southwest quarter of section nineteen; and the south half of the northeast quarter, and the southeast quarter, and the northwest quarter of the southwest quarter of section twenty-nine; and the northwest quarter of the northwest quarter of section thirty-three; and the southeast quarter of the northeast quarter of section thirty-five, township seventy-one north, of range eleven west, containing, in all, four hundred and eighty-four acres and twelve-hundredths of an acre:

To have and to hold the above-de'cribed lands. and each and every parcel thereof, with all their rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the De' Moine' Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor June 10th, 1858, and was recorded in the Des Moines River records, book A, page 5.

June 15, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does, hereby sell, grant, bargain, and convey to the said De' Moine' Navigation and Railroad Company the following-described lands, to wit:

The northwest quarter of the southwest quarter of section twenty-one; and the northwest quarter of the northeast quarter, and the southeast quarter, and the east half and the northwest fractional quarter of the southwest quarter, and the east half of the northwest quarter of section thirty-one, in township seventy-one north, of range twelve west, containing, in all, four hundred and forty-eight acres and eighty-seven hundredths of an acre. And also, lot No. two of section thirteen, and the southwest quarter of the northeast quarter, and the west half of the

400 southeast quarter, and the southwest quarter, and the southeast quarter of the northwest quarter of section fifteen; and the east half of the southeast quarter of section seventeen; and the west half of the northeast quarter, and the south half of the southeast quarter, and the northwest quarter of the southeast quarter, and the east half of the southwest quarter, and the south half of the northwest fractional quarter of section nineteen; and the east half and the northeast quarter of the southwest quarter, and the east half, and the northwest quarter of the west quarter of section twenty-one; and the north half and the southeast quarter of the southeast quarter, and the southwest quarter, and the west half of the northwest quarter of section twenty-three; and the northwest quarter of the southwest quarter of section twenty-five; and the east half of the northeast quarter, and the southeast quarter, and the east half of the southwest quarter, and the northwest quarter of the southwest quarter, and the northwest quarter of the northwest quarter of section twenty-seven; and the northeast quarter of the northeast quarter, and the south half of the northeast quarter, and the north half of the southeast quarter, and the southwest quarter and the northeast quarter of the southwest quarter, and the south half and the northwest quarter of the northwest quarter of section twenty-nine; and the northeast quarter, and the northwest of the southeast quarter, and the east half of the southwest quarter, and the east half of the northwest quarter of section thirty-one; and the north half of the northeast quarter, and the north half of the northwest quarter of section thirty-three; and the northeast quarter, and the northeast quarter of the southeast quarter, and the northeast quarter of the southwest quarter, and the east half and the northwest quarter of the northwest quarter of section thirty-five, in township seventy-one north, of range thirteen west, containing together three thousand three hundred and twenty-eight acres and thirteen-hundredths of an acre. And also, the southeast quarter of the southwest quarter, and the northwest quarter of the southwest quarter of section three; and the northwest fractional quarter of the northeast quarter, and the southwest quarter of the northwest quarter of section five; and the northeast quarter of the northeast quarter of section seven; and the northwest quarter of the northeast quarter of section nine; and the south half of the northeast quarter, and the northwest quarter of the southeast quarter, and the southwest quarter of the southwest quarter, and the southwest quarter of the northwest quarter of section eleven; and the south half of the southeast quarter of section thirteen; and the southeast quarter of the northeast quarter of section seventeen; and the southeast quarter of the northeast quarter, and the southwest quarter of the southeast quarter, and the south half of the northwest quarter of section twenty-three; and the south half of the northeast quarter, and the northeast quarter of the southeast quarter, and the southeast quarter of the northwest quarter of section twenty-five, in township seventy-one north, of range fourteen west, containing together eight hundred and ninety-three acres and fifty-nine-hundredths of an acre. And also the southwest quarter of the northeast quarter of section seven, in township seventy-two north, of range thirteen west, containing forty acres. And also, the northeast quarter of the southwest quarter of section seventeen; and the south half of the southeast quarter of section nineteen; and the southwest quarter of the southwest quarter of section twenty-nine; and the southwest quarter and the southeast quarter of section thirty-one; the northeast quarter, the northwest quarter of the southeast quarter, and the northeast quarter of the northwest quarter of section thirty-three, in township seventy-two

401 north, of range fourteen west, containing together seven hundred and twenty acres and eighty-five hundredths of an acre. And also, the southeast quarter of the northeast quarter of section three; the northwest quarter of the southeast quarter, of *of* the southwest quarter of the southwest quarter, the north half of the southwest quarter, and the south half of the northwest quarter of section five; the east half of the northeast quarter, the southwest quarter of the northeast quarter, the northwest quarter of the southeast quarter, and the southeast quarter of the northwest quarter of section seven; the northeast quarter of the southeast quarter of section thirteen; the northeast quarter of the northeast quarter of section twenty-three; the northeast quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section twenty-five, in township seventy-two north, of range fifteen west, containing together six hundred and forty acres. And also, the north half of the southeast quarter of section seventeen; the northeast quarter of the northwest quarter of section twenty-seven; the northeast quarter of the southwest quarter, the southwest quarter of the southwest quarter, the south half and the northwest quarter of the northwest quarter of section thirty-three, in township seventy-three north, of range fourteen west, containing together three hundred and twenty acres. And also the southwest quarter of the southeast quarter, the southeast quarter of the southwest quarter of section one, and the southwest quarter of the southeast quarter of section thirty-one, in township seventy three north, of range fifteen west, containing together one hundred and twenty acres:

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances, of whatever nature, thereunto belonging or appertaining, unto the De' Moine' Navigation and Railroad Company, their successor or assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and the year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify the foregoing deed was received from the governor June 10th, 1858, and recorded in the Des Moines River records, book A, pages 6, 7, & 8, June 15, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARNER, *Dep't.*

This indenture, made this third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the De' Moine' Navigation Railroad Company, parties of the second part, witnesseth: That the party of the first part, for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said De' Moine' Navigation and Railroad Company for the improvement of the navigation of the Des Moines River, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company the following-described lands, to wit:

402 The northeast quarter of the northeast quarter, *of* the northwest quarter of the *of the* southeast quarter, and the southeast quarter of the northwest quarter of section one, in township seventy-two north, of range sixteen west, containing together one hundred and thirty-one acres and fifty hundredths of an acre. And also the northwest quarter of the northeast quarter of section seven; and the southeast quarter of the northeast quarter, the north half of the southeast quarter, and the northeast quarter of the southwest quarter of section nine; and the northeast quarter of the southwest quarter of section thirteen; the northeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, the south half and the northeast quarter of the southwest quarter, and the east half of the northwest quarter of section fifteen; the southwest quarter of the southeast quarter, and the southwest quarter of the southwest quarter of section twenty-one; and the south half of the southeast quarter of section thirty-five, in township seventy-three north, of range sixteen west, containing six hundred and eighty acres. And also the east half of the southeast quarter of section one, in township seventy-three north, of range seventeen west, containing eighty acres:

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances, of whatever nature thereunto belonging or appertaining, unto the De' Moine' Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor June 10, 1858, and was recorded in Des Moines River records, book A, pages 9 & 10, June 16, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the *of the* first part, and Des Moine' Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said De' Moine' Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, bargain, and convey to the De' Moine' Navigation and Railroad Company the following-described lands, to wit:

The southwest quarter of the southeast quarter, and the northeast quarter of the northwest quarter of section twenty-seven, in township seventy-four north, of range fifteen west, containing eighty acres. And also the east half of the southeast quarter of section five; all of

403 section seven; lot number seven; the southeast quarter of the southwest quarter and the west half of the southwest quarter of section nine; the northwest of the northeast quarter of section eleven; lots numbered six, seven, eight, & nine of section fifteen; all of section seventeen; the northeast quarter, the southwest fractional quarter, and the northeast quarter of the northwest quarter of section nineteen, and the north half of the southeast quarter, and the southwest quarter of the southwest quarter, and the north half of the southwest quarter, and the southwest quarter and the north half of the northwest quarter of section twenty-one; and lot three of section twenty-three; and the southwest quarter of the southwest quarter of section twenty-seven; and the northwest quarter and the south half of the northeast quarter, and the southwest quarter and the east half of the southeast quarter, and the north half and the southwest of *of* the northwest quarter of section twenty-nine; and the northwest quarter of the northeast quarter, and the southeast quarter of the southeast quarter, and the east half of the northwest quarter of section thirty-one; and the north half, and the north half of the southeast quarter, and the southeast quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section thirty-three, in township seventy-four north, of range sixteen west, containing together three thousand five hundred and twenty-three acres and seventy-seven-one-hundredths of an acre. And also, the south half of the southeast quarter, and the south half of the southwest quarter of section three; and the northwest fractional quarter of the northwest quarter of section five; and the southwest fractional quarter of the southwest quarter and the southeast quarter of the northwest fractional quarter of section seven; and the north half, and the north half and the southwest quarter of the southeast quarter, and the southwest quarter of section nine; and the east half, and the southwest quarter of the southeast quarter, and the east half of the southwest quarter of section eleven; and the east half and the southwest quarter of section thirteen; and the northeast quarter, and the south half of the southeast quarter, and the south half and the northwest quarter of the southwest quarter, and the southwest quarter of the northwest quarter of section fifteen; and all of section seventeen; and the north half of the northeast quarter, and the northeast quarter of the southeast quarter, and the west fractional half of section nineteen; and the north half, and the southeast quarter, and the southeast quarter, and the northwest quarter of the southwest quarter of section twenty-one; and the northeast quarter, and the south half of the southeast quarter, and the southwest quarter, and the south half of the northwest quarter of section twenty-three; and the northeast quarter, and the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter, and the southwest quarter, and the south half and the northwest quarter of the northwest quarter of section twenty-five; and the northwest quarter of the southwest quarter, and the northwest quarter of section twenty-seven; and the northwest quarter of the northwest of section twenty-nine; the north half, and the southeast quarter of the northeast quarter of section thirty-five, in township seventy-four north, of range seventeen west, containing together four thousand nine hundred and fifty-seven acres and eighty-nine hundredths of an acre. And also, the northwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section seven; the south half of northeast quarter and the southeast quarter of the northwest quarter of section thirty-one; the southeast quarter of the southeast quarter and the

404 northeast quarter of the southwest quarter of section thirty three, in township seventy five north, of range sixteen west, containing together two hundred and eighty acres. And also, the southwest quarter of the northeast quarter, *and the southeast quarter*, and the southeast quarter of the southeast quarter of section five; the west half of the northwest quarter of section twenty-one; the east half of the southwest quarter of section twenty-three; the northwest quarter of the northeast quarter of section twenty-five; the northeast quarter of the northwest quarter of section twenty-seven; lot numbered twelve of section twenty-nine; the southeast quarter of the northeast quarter, the northeast quarter, and the southwest quarter of the southeast , and the south half of the southwest quarter of section thirty-one, in township seventy-five north, of range seventeen west, containing together five hundred and thirty-nine acres and thirty-hundredths of an acre. And also, the southwest quarter of the northeast quarter, the southeast of the southeast quarter, and the southwest quarter of the northwest quarter of section twenty-one; and the southeast quarter of the southeast quarter, and the west half of the southwest quarter of section twenty-seven; the northeast quarter of the northeast quarter of section thirty-three; and the northwest quarter and the south half of the northeast quarter of section thirty-five, in township seventy-six north, of range seventeen west, containing together four hundred acres:

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights priveleges, immunities, and appurtenances, of whatever nature thereunto belonging or appertaining, unto the De' Moine' Navigation and Railroad Company, their successors and assigns, forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa, the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor June 16th, 1858, and was recorded in Des Moines River records, book A, pages 11, 12, & 13, June 16, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moine' Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said De' Moine' Navigation and Railroad Company for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain, and convey to the said De' Moine' Navigation and Railroad Company the following-described lands, to wit:

405 The north half and the southwest quarter of the northeast quarter, the south half and the northwest quarter, of the southeast quarter, the east half of the southwest quarter, and the east half of the northwest quarter of section one; the north half of the northeast quarter, the northwest quarter of the southwest quarter, the southwest quarter of the northwest quarter, and the north half of the northwest quarter of section three; the northeast quarter of the northeast quarter of section five; the north half and the southeast quarter of the northeast quarter, the north half and the southwest quarter of the southeast quarter, and the southwest quarter of section eleven; the northeast of the northeast quarter of section fifteen; the north half and the southeast quarter of the northeast quarter of section twenty-three, in township seventy-four north, of range eighteen west, containing together one thousand two hundred and seventy-nine acres, and twenty-one hundredths of an acre. And also, the southwest quarter of the southwest quarter, and the northwest quarter of the northwest of section five; the west half of the northwest quarter of section seven; the southwest quarter of the southwest quarter of section nine; the north half of the northeast quarter, and the south half of the southeast quarter of section seventeen; the west half of the northeast quarter, the southeast quarter of the southeast quarter, and the southeast quarter of the northwest quarter of section nineteen; the southwest quarter of the southwest quarter of section twenty-one; the northeast quarter, and the southwest quarter of the southwest quarter of section twenty-seven; the south half of the southeast quarter; the south half of the southwest quarter, and the north half of the northwest quarter of section twenty-nine; the north half of the northeast quarter of section thirty-one; the northeast quarter, the southwest quarter of the southwest quarter, and the northwest quarter of the northwest quarter of section thirty-three, in township seventy-five north, of range eighteen west, containing together one thousand one hundred and eighty acres, and twenty-nine hundredths of an acre. And also, the east half, the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section one; the west half of the southeast quarter and the south half of the southwest quarter of section eleven; the south half of the northwest quarter, and the northeast quarter of the northwest quarter of section thirteen; the north half of the northeast quarter, and the northeast quarter of the northwest quarter of section fifteen, in township seventy-five north, of range nineteen west, containing together seven hundred and ninety-one acres, and thirty-one hundredths of an acre. And also, the south half of the southeast quarter, and the southwest quarter of section seven; the east half of the southwest quarter of section thirty-one, in township seventy-six north, of range eighteen west, containing three hundred and eight acres, and forty-nine hundredths of an acre. And also, the west of section one; the north half of the northeast quarter, the northeast quarter of the southeast quarter, and the southwest quarter of the northeast quarter of section three; and the southwest quarter of the southeast quarter of section fifteen; and the north half and the southwest quarter of the southwest quarter of section seventeen; and the northeast quarter of the northeast quarter, and the north half and the southeast quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section nineteen; and the north half and the southwest quarter of section twenty-one; and the northeast quarter and the south half of the northeast quarter, and the north half of the southeast quarter, and the

406 southeast quarter of the southeast quarter, and the north half of

the southwest quarter of section twenty-five; and the southwest quarter of the northeast quarter, and the southwest quarter of the southeast quarter, and the south half of the southwest quarter, and the east half of the northwest quarter of section twenty-seven; and the north half and the northeast quarter of the southeast quarter, and the north half of the southwest quarter of section twenty-nine; and the northeast quarter, and the north half of the southwest quarter, and the south half and the northeast quarter of the northwest quarter of section thirty-three; and the north half of the northeast quarter and the northeast quarter of the northwest quarter of section thirty-five, in township seventy-six north, of range nineteen west, containing together two thousand seven hundred and ninety-one acres and forty-four hundredths of an acre. And also, the southwest quarter of the northeast quarter and the northeast quarter of southwest quarter, and the southeast quarter of the northwest quarter of section three; and the southwest quarter of the northeast fractional quarter, and the southeast quarter of the southeast quarter, and the southeast quarter of the northwest quarter, and the northwest fractional quarter of the northwest quarter of section five; and all of section seven; and the south half of the southwest quarter of section nine; and the southwest quarter of the northeast quarter, and the southwest quarter, and the south half and the northeast quarter of the northwest quarter of section thirteen; and all of section fifteen; and the north half of the southeast quarter of the northeast quarter, and the south half of the southeast quarter, and the south half of the southwest quarter, and the northeast quarter of the southwest quarter, and the southwest quarter, and the north half of the northwest quarter of section seventeen; and the southwest quarter, and the northeast quarter of the northeast quarter, and southeast quarter and the southwest fractional quarter, and the southeast quarter and the west fractional half of the northwest quarter of section nineteen; and the east half, and the south half of the southwest quarter, and the southwest quarter and the north half of the northwest quarter of section twenty-one; and the east half, and the south half and the northeast quarter of the southwest quarter of section twenty-three; and the northeast quarter of the southeast quarter of section twenty-five; and the north half and the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter, and the west half of the southwest quarter, and the southwest quarter and the northeast of the northwest quarter of section twenty-seven; and the northeast quarter of the northeast quarter, and the north half of the southeast quarter, and the northwest quarter of the southwest quarter, and the northwest quarter of the northwest quarter of section twenty-nine, in township seventy-six north, of range twenty west, containing together four thousand three hundred and thirty-five acres and eighty-three hundredths of an acre. And also, the west half of the northeast quarter, and the west half of the southeast quarter, and the west fractional half of section one; and the southwest quarter of the northeast quarter of section three; and the northeast quarter, and the north half and southeast quarter of the southeast quarter, and the southwest quarter, and the south half and the northeast quarter of the northwest quarter of section eleven; the northeast quarter of the northeast quarter, the southeast quarter of the southwest quarter, and the northeast quarter of the northwest quarter of section thirteen; the north half, and the east half of the southeast quarter of section twenty-three;

the north half of the northeast quarter, and the northeast
407 quarter of the northwest quarter of section twenty-five in township seventy-six north, of range twenty-one west, containing to-

gether one thousand seven hundred and twenty-one acres and eighty-three hundredths af an acre. And also, the northwest quarter of the southeast quarter of section nineteen; the northeast quarter of the northwest quarter of section thirty-three. in township seventy-seven north, of range eighteen west, containing together eighty acres. And also, lot numbered three of section thirty-one, in township seventy-seven north, of range twenty west, containing two acres and ten hundredths of an acre. And also, the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section seven; and the northwest quarter of the southeast quarter of section thirteen; and northwest quarter of the southeast quarter of section seventeen; and the northwest quarter of the northeast quarter of section nineteen; and the northeast quarter of the northwest of section twenty-three; and the southwest quarter of the northeast quarter, and the southeast quarter of the southeast quarter of section twenty-five; and the northwest quarter, and the southeast quarter of the northeast quarter and the northwest quarter of the southeast quarter and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-nine; and the southwest quarter of the northeast quarter of section thirty-three; and the southwest quarter of the northeast quarter, and the southeast quarter, and the south half and the northwest quarter of the southwest quarter, and the northeast quarter of the northwest quarter of section thirty-five, in township seventy-seven north, of range nineteen west, containing together nine hundred and forty-nine acres and sixty-nine hundredths of an acre. And also, the south half of the northeast fractional quarter, and the north half of the southeast quarter and the southeast quarter of the northwest quarter of section one; and the west half of the southeast quarter, and the southwest quarter, and the north fractional half of the northwest quarter of section three; and the east half of the northeast quarter, and the northeast quarter of the southeast quarter of section seven; and the whole of section nine; and the northeast quarter and the south half of the northeast quarter, and the south half, and the northwest quarter of section eleven; and the west half of the southeast quarter of section thirteen; and the north half, and the northwest quarter, and the south half of the southeast quarter, and the southwest quarter of section fifteen; and the east half of the northeast quarter, and the southeast quarter, and the northeast quarter of the southwest quarter, and the northwest quarter of section seventeen; and the northeast quarter of the northeast quarter of section twenty-one; and the northeast quarter, and the northwest quarter of the southeast quarter, and the northeast quarter of the northwest quarter of section twenty-three; and the northwest quarter of the northeast quarter of section twenty-five; and lots No. four & nine of section twenty-nine, in township seventy-seven north, of range twenty west, containing three thousand three hundred and ninety-nine acres and seventy-nine hundredths of an acre. And also, the north fractional half and the southwest quarter of the northeast quarter, and the southwest quarter of the southwest quarter, and the southeast quarter, and the north fractional half of the northwest quarter of section three; and the southeast quarter of the northeast quarter of section five; and the southwest quarter of the northeast quarter; lots numbered one and three of section seven; and lots No. one, two, three, four, and six of section nine; and
408 the northwest quarter of the southwest quarter of section thirteen; and lot seven of section fifteen; and the northwest quarter of the northeast quarter, and the southeast quarter of the southeast quarter of section seventeen; and the southeast quarter of the south-

west quarter of section twenty-three; and the southeast quarter of the southwest quarter of section twenty-five; and the west half of the southwest quarter, and the northeast quarter of the northeast quarter of section twenty-seven; and the east half of the northeast quarter, and the west half of the northwest quarter of section thirty-three; and the northwest quarter of the northeast quarter, and the south half of the northeast quarter, and the north half of the southeast quarter, and the southwest quarter of the southeast , and the northeast quarter of the southwest quarter, and the northeast quarter of the northwest quarter of section thirty-five, in township seventy-seven north, of range twenty-one west, containing together one thousand four hundred and ninety acres and eighty-one hundredths of an acre:

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moine' Navigation and Railroad Company, their successors or assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above mentioned, of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor, June 10th, 1858, and was recorded in Des Moines River records, book A, pages 14, 15, 16, 17, & 18, June 16th, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moine' Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of *of* the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the Des Moine' Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain, and convey to the said Des Moine' Navigation and Railroad Company the following-described lands to wit: The southeast quarter and the west fractional half of the southwest quarter of section nineteen; the south half of the northeast quarter, the northwest quarter of the southeast quarter, the south half of the southeast quarter, and the north half of the southwest quarter of section twenty-nine; the east half of the northwest quarter of section thirty-one; the southwest quarter of the northeast
409 quarter, the northwest quarter and the south half of the southeast quarter, the southwest quarter, and the south half and the northwest quarter of the northwest quarter of section thirty-three; and the south half of the southeast quarter, and the northeast quarter of the southwest quarter of section thirty-five, in township seventy-eight north, of range twenty west, containing nine hundred and ninety-nine

acres and fifty hundredths of an acre. And also, the south half of the northeast quarter, the north half of the southeast quarter, the northwest quarter of the southwest, and the south half of the northwest quarter of section fifteen ; the northeast quarter, the northwest quarter of the southeast quarter, and the east half of the northwest quarter of section seventeen ; the northwest quarter of the northeast quarter, the southeast quarter of the northeast quarter, and the southwest quarter of the southeast quarter of section twenty-one ; the east half of the northeast quarter, the northeast quarter of the southeast quarter, the north half of the southwest quarter, and the northeast quarter of the northwest quarter of section twenty-three ; the northeast quarter, and the southwest quarter of the northeast quarter, the southeast quarter of the southeast quarter, the southwest quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-seven ; the west half of the northeast quarter, the southeast quarter, *the southeast quarter*, the south half and the northwest quarter of the southwest quarter, and the northeast quarter of the northwest quarter of section twenty-nine ; the northeast quarter, the northwest quarter of the southeast quarter, the northeast quarter and the west fractional half of the southwest quarter of section thirty-one ; the southeast quarter of the northeast quarter, the east half of the southeast quarter, the south half and the northeast quarter of the southwest quarter of section thirty-three ; and the southeast quarter of the northwest quarter of section thirty-five, in township seventy-eight north, of range twenty-one west, containing two thousand and ninety-six acres and ninety hundredths of an acre :

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moine' Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELL',
Secretary of State.

This to certify that the foregoing deed was received from the governor, June 10th, 1858, and was recorded in the Des Moines River records, book A, pages 19 & 20, June 16th, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the
410 first part, and the De' Moine' Navigation and Railroad Company, parties of the second part, witnesseth : That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and the agreements between the State of Iowa and the said De' Moine' Navigation and Rail-

road Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain, and convey to the De' Moine' Navigation and Railroad Company, the following-described lands, to wit:

The northeast fractional quarter of the northwest fractional, and the south half of the northwest fractional quarter of section one; the southwest quarter of the northeast fractional quarter, and the northwest fractional quarter of section three, in township seventy-six north, of rang' twenty-two west, containing together three hundred and sixteen acres and eighty-seven hundredths of an acre. And also, the northwest quarter of the southwest quarter of section one; and lots two and eight of section five; and the southeast quarter of the southwest quarter; and lot seven of section nine; and lots three and five of section eleven; and the west half of the northwest quarter of section thirteen; and the east half of the northeast quarter, and the northeast quarter of the southeast quarter, and the southwest quarter of the southeast quarter of section twenty-three; and the west half of the southwest quarter of section twenty-five; and the southeast quarter of the northeast quarter, and the southeast quarter of section twenty-seven; and the east half of the northeast quarter, and the northeast quarter of the southeast quarter, and the southwest quarter of the southwest quarter of section thirty-five, in township seventy-seven north, of range twenty-two west, containing together nine hundred and forty-two acres and eighty-five hundredths of an acre. And also, the southwest quarter of the northwest quarter of section one; the northwest quarter of the southeast quarter of section five; the northeast quarter of the northeast quarter, and the northeast quarter and the west fractional half of the northwest quarter of section seven; the southeast quarter of the northwest quarter of section nine; the southwest quarter and the north half of the southwest quarter of section eleven; the south half of the northeast, the north half and the southwest quarter of the southeast quarter, the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section fifteen; the northeast quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section seventeen; the northwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section twenty-one; the northwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section twenty-seven, in township seventy-seven north, of range twenty-three west, containing nine hundred and forty-three acres, and eighty hundredths of an acre. And also, the southwest quarter of the southeast quarter, and the northwest of the southwest quarter of section one; the northeast fractional quarter of the northeast fractional quarter of section three; the north fractional half of the northeast quarter, and the northeast fractional quarter of the northwest fractional quarter of section five; the east half, the northeast quarter of the southwest quarter, and the east half of the northwest quarter of section eleven, in township seventy-seven north, of range twenty-four west, containing six hundred and eighty-four acres and thirteen hundred's of an acre: To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto be-
411 longing or appertaining, unto the De' Moine' Navigation and Railroad Company, their successors and assigns forever, in fee simple.

In witness whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines the day and year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor, June 10th, 1858, and was recorded in Des Moines River records, book A, pages 21 & 22, June 16th, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

This indenture, made this third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first party, and the De' Moine' Navigation and Railroad Company, parties of the second part witnesseth: That the said part' of the first part for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Mo'ne' Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa does hereby sell, grant, bargain, and convey to the said De' Moine' Navigation and Railroad Company the following referred to and described lands, to wit:

The southwest quarter of the southeast quarter, the southeast quarter of southwest quarter, the north half of the southwest quarter, the west half of lots numbered five and eight of section three; the southeast quarter of the southeast quarter, and lot numbered six of section five; the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nine; the northwest quarter of the southwest quarter of section eleven; the southwest quarter of the southeast quarter of section thirteen; the southeast quarter of the southeast quarter of section fifteen; the south half of the northeast quarter, the southeast quarter, and the northeast quarter of the northwest quarter of section nineteen; the northwest quarter of the southeast quarter, and the west half of the southwest quarter of section twenty-one; the northeast quarter of the northeast of section twenty-three; the northeast quarter of the southwest quarter, and the south half and the northeast quarter of the northwest quarter of section twenty-five; the northeast quarter of the southwest quarter, and the southwest quarter and the north half of the northwest quarter of section twenty-nine; lots numbered eight and nine of section thirty-one; and the southwest quarter of the southwest quarter of section thirty-five, in township seventy-eight north, of range twenty-two west, containing one thousand four hundred and thirty acres and fifty-five hundredths of an acre. And also, the northeast quarter and the northwest quarter of the southeast quarter of section seven; the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section thirteen; the southeast quarter of the southeast quarter of section seventeen; lots numbered five, seven, and eight of section twenty-
412 three; the east half of the southeast quarter, and lots numbered one, three, and five of section twenty-five; the northwest quarter of the northeast quarter of section twenty-seven; the west fractional half of the northwest fractional quarter of section thirty-one; and the north-

east quarter of the northeast quarter of section thirty-five, in township seventy-eight north, of range twenty-three west, containing eight hundred and forty-six acres and seven hundredths of an acre. And also, the northwest quarter of the northeast quarter, and lots numbered one, three, and four of section thirteen; the southwest quarter of the northwest quarter of section twenty-nine; the northwest fractional quarter of the northwest quarter of section thirty-one; the southwest quarter of the southwest of section thirty-three, in township seventy-eight north, of range twenty-four west, containing two hundred and seventy-eight acres and sixty-six hundredths of an acre. And also, the southeast quarter of the southeast quarter of section thirteen, in township seventy-eight north, of range twenty-five west, containing forty acres. And also, the southwest quarter of section twenty-nine; the south half of the southeast quarter of section thirty-one; the west half of the southwest quarter of section thirty-three, in township seventy-nine north, of range twenty-two west, containing three hundred and twenty acres. And also, the southwest quarter of the southwest quarter of section five; the northeast quarter of the northeast quarter of section seven; the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section seventeen; and the northwest quarter and the southeast quarter of the northeast quarter of section twenty-one, in township seventy-nine north, of range twenty-three west, containing two hundred and forty acres. And also, the southwest quarter of the southwest quarter, and lot numbered seven of section five; lot numbered three of section twenty-one; the northeast quarter of the northeast quarter of section twenty three; the southwest quarter of the northeast quarter, the northwest quarter of the southeast quart., and the north half of the northwest quarter of section twenty-five, in township seventy-nine north, of range twenty-four west, containing two hundred and eighty-seven acres and five hundredths of an acre. And also, the southeast quarter of the southwest quarter, and the northwest fractional quarter of the northwest quarter of section thirty-one, in township eighty north, of range twenty-three west, containing eighty-eight acres and sixty-six hundredths of an acre. And also, all of section three; the north half and the southeast quarter of section nine; all of section eleven; the southwest quarter of the northeast quarter; the west half of the southeast quarter and the half of section thirteen; the northeast quarter of section fifteen; the northwest quarter, and the south half of the northeast quarter of section seventeen; the northeast quarter, the west half of the southeast quarter, the east half of the southwest quarter, the southeast quarter of the northwest quarter, and the north half of the northwest quarter of section twenty-three; the southeast quarter of section twenty-five; the southeast quarter of the southwest quarter, and the north half of the northwest quarter of section twenty-seven; and lot numbered one of section twenty nine, in township eighty north, of range twenty-four west, containing three thousand two hundred and seventy-seven acres and sixty-four hundredths of an acre. And also, the south half of the northeast quarter, the east half of the southeast quarter, and lots numbered one, five, and seven of section three; the south half and the northwest quarter of the northeast quarter, the west half of the southwest quarter, the southwest quarter and the north fractional half
413 of the northwest quarter of section five; all of section seven; the west half of the southeast quarter of section nine; lots numbered three, four, five, and seven of section eleven; the southeast quarter of the southeast quarter, the southwest quarter and the north half of the southwest quarter of section fifteen; the north half and the southeast

quarter of the northeast quarter, the east half of the southeast quarter, the southwest quarter of the southwest quarter, and the north half of the northwest quarter of section seventeen; all of section nineteen; the west half of the northeast quarter, the south half, and the southwest quarter of the northwest quarter of section twenty-one; the northwest quarter of the southwest quarter, and the west half of the northwest quarter of section twenty three; the southwest quarter of the southeast quarter of section twenty five; the southwest quarter of the northeast quarter, the west half of the southeast quarter, the south half of the southwest quarter and the northwest quarter of section twenty-seven; the north half and the southeast quarter of the northeast quarter, the south half of the southwest quarter, the southwest quarter, and the north half of the northwest quarter of section twenty-nine; the northeast quarter, the northeast quarter of the southeast quarter, and the east half of the northwest quarter of section thirty-one; the northeast quarter and the west half of the southwest quarter of section thirty-three; the west half of the northeast quarter, the west half of the southeast quarter, and the southwest quarter of section thirty-five, in township eighty north, of range twenty-five west, containing four thousand seven hundred and sixty acres and ninety-eight hundredths of an acre. And also, the south half of the southwest quarter and the northwest quarter of the southwest quarter of section seven; all of section nineteen; the southwest quarter of the southwest quarter of section twenty-one; the west half of the southwest quart. of section twenty-seven; all of section twenty-nine; the southeast quarter of section thirty-one; and all of section thirty-three, in township eighty-one north, of range twenty-four west, containing two thousand three hundred and twenty-nine acres and forty hundredths of an acre. And also, the east half of section three; a' the northeast quarter, the southwest quarter, and the south half of the northwest quarter of section seven; the east half of the northeast quarter, and the southwest quarter of the southwest quarter of section nine; the northeast quarter of section eleven; the northeast quarter of section thirteen; the northwest quarter of the southwest quarter, the southeast quarter of the northwest quarter, and the north half of the north quarter of section fifteen; the northwest quarter of the southeast quarter, *of* the southwest quarter of the southwest quarter, the northeast quarter of the southwest quarter, the south half and the northwest quarter of the northwest quarter of section seventeen; the northwest quarter of the northeast of section twenty-one; the north half of the northeast quarter of section twenty-three; the north half of the northeast quarter, the southeast quarter of the northeast quarter and the east half of the southeast quarter of section twenty-five; the south half of the southeast quarter and the southwest quarter of section thirty-one, in township eighty-one north, of range twenty-five west, containing two thousand one hundred and fifty-two acres and eight-six hundredths of an acre. And also, lots numbered six, seven, and eight, in section thirteen; and the east half of the southeast quarter of section twenty-three; and the north half of the northwest quarter of section twenty-five; the northwest quarter of the northeast quarter, the north half of the southeast quarter, the southeast quarter of the southeast quarter, and the
414 northeast quarter of the southwest quarter of section twenty-five, in township seventy-eight north, of range twenty-five west, containing five hundred and eleven acres and fifty-five hundredth' of an acre. And also, the east half of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-three, in township seventy-nine north, of range twenty-two west, containing one hun-

dred and twenty acres. And also, the north half of the northwest quarter of section twenty-one, in township seventy-nine north, of range twenty-three west, containing eighty acres. And also, the north fractional half of section one; all of section three; the north fractional half of the northeast quarter of section five; the east half, the east half of the southwest quarter, east half of the northwest quarter, and the northwest quarter of the northwest quarter of section nine; all of section eleven; the northeast quarter of the northeast quarter, and the east half of the southwest quarter of section thirteen; all of section fifteen; the east half of the northeast quarter, and the east half of the southeast quarter of section twenty-one, in township seventy-nine north, of range twenty-five west, containing three thousand two hundred twenty-six acres and forty-one hundredths of an acre. And also, the north half of the southeast quarter, the southeast quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section nine, in township eighty-one north, of range twenty-five west, containing one hundred and sixty acres:

To have and to hold the above-described lands and each and every parcel thereof, with all the rights, privileges, immunities and appurtenances of whatever thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, the' successors and assigns forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor, June 10, 1858, and was recorded in Des Moines River records, book A, pages 23, 24, 25, 26, 27, June 10, 1858.

T. S. PARVIN,
Register of the State Land Office.
By D. S. WARREN, *Dep't.*

STATE LAND OFFICE, *Des Moines, Iowa.*

I, C. C. Carpenter, register of the State land office of the State of Iowa, hereby certify that the foregoing, on pages 1 to 53, inclusive, are true and correct copies of all the deeds of the State of Iowa to The De' Moine' Navigation and Railroad Company, dated May 3d, 1858, which contain land situate below the Raccoon Fork of the Des Moines River, as appears by the records of this office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 20th day of September, 1870.

[SEAL.] C. C. CARPENTER, *Register.*
By JOHN M. DAVIS, *Deputy.*

415 (Endorsed as follows:) Filed Oct. 19th, 1870. George B. Corkhill, clerk.

GENERAL LAND OFFICE, *September 2d*, 1870.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications from the files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JOS. S. WILSON,
Commissioner of the General Land Office.

Supreme Court of the United States, December term, 1864.

Cha's Tracy; P. Smith for intervenor.

THE DES MOINES NAVIGATION & RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 336.

In error to the circuit court of the United States for the southern district of New York.

Docket entries.

1864, Dec. 10. Record received and filed. No. 221 of December term, 1865.

Docket entries.—continued.

1866, Feb'y 8. Motion of Mr. Allison for leave to intervene, filed.
" " " Affidavit of J. M. McKinley, filed.
" " 13. Leave granted The Dubuque & Sioux City R. R. Company to intervene, &c.
" " 21. Brief of Smith for intervenor, filed.
No. 133 of December term, 1866.

Docket entries.—Continued.

Dec. 14. Mr. J. F. Dunscombe filed motion to intervene, &c.
" " 17. Leave granted Mr. Dunscombe to appear and file printed argument.
" " " No. 204 to be argued with this cause.
1867, Feb. 8. Submitted with No. 204.
" May 13. Reversed with costs, and a venire awarded.

Extracts from minutes.

THE DES MOINES NAVIGATION & R. R. Co., pl'ff in error, *vs.* CALVIN BURR. } No. 221. Dec. term, '65.

On consideration of the motion made and affidavit filed in this
416 cause on the 8th instant, it is now ordered by the court that leave be, and the same is hereby, granted counsel of The Dubuque and Sioux City Railroad Company to appear and be heard on the argument when this cause is reached.

13 FEBRUARY, 1866.

DES MOINES NAVIGATION & R. R. COMPANY *vs.* CALVIN BURR. } No. 133 of December term, 1866.

On consideration of the motion of Mr. Dunscombe for leave to intervene, &c., in this cause, it is now here ordered by the court that leave be, and the same is hereby, granted Mr. Dunscombe to intervene in behalf of the Iowa Homestead Company, in the argument of this cause, and to file a printed argument.

17th DECEMBER, 1866.

DES MOINES NAVIGATION & R. R. CO. *vs.* CALVIN BURR.

This cause was submitted to the court on the record and printed argument, by Mr. Smith, of counsel for intervenors, and stipulation of counsel filed, to be considered with No. 204, submitted, on printed arguments, at the last term of this court.

8TH FEB'Y, 1867.

No. 133. Supreme Court of the United States, December term, 1866.

THE DES MOINES NAVIGATION AND RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR.

In error in the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

In consideration whereof it is now here ordered and adjudged by this court that the judgement of the said circuit court, in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award a venire facias de novo.

Per Mr. Justice Nelson.

13TH MAY, 1867.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extracts from minutes, and judgment.

Test: D. W. MIDDLETON, *Clerk Sup. Court U. S.*

417 Supreme Court of the United States, December term, 1865.

THE DES MOINES NAVIGATION AND RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

I, James M. McKinley, on oath, say that I am an attorney and coun-

sellor at law, and am assistant attorney for the Dubuque and Sioux City R. R. Co.; that, within the past few days, and not before, I have had an opportunity to examine the record in the case above named; that the said railroad company are materially interested in obtaining a correct decision of the principal point raised in said case; and that I verily believe a decision of the point against the above-named def't in error would prejudice the interest of said Dubuque and Sioux City R. R., although not a party to the record in the above-named case. The decision made by the court below (Hon. W'm D. Shipman) is the point on which rests the title to above seventy-seven thousand acres of the land granted by Congress to aid in the construction of said Dubuque & Sioux City Railroad. Further, that I have reason to fear that said Burr is not a bona-fide litigant; but, on the contrary, is desirous of obtaining a decision against himself with a view to prejudicing the title of The Dubuque and Sioux City Railroad Company and their grantees.

Record, page 31, folios 106 & 107.

Signature to foregoing affidavit.

(Signed) JAMES M. McKINLEY.

Subscribed & sworn to before me, the clerk of the district court of Dubuque County, Iowa, this 1st day of February, 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) The Des Moines Navigation and Railroad Co., plaintiff in error, vs. Calvin Burr. Affidavit of J. M. McKinley. Filed 8th Feb'y, 1866.

Supreme Court of the United States, December term, 1866.

THE DES MOINES NAVIGATION AND RAILROAD Company, pl'ff in error, *vs.* CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque and Sioux City Railroad Company, a corporation, &c., by W'm B. Allison, its attorney, now comes and moves the court for leave to intervene in the above-entitled cause, and also for
418 leave to file an argument in same for reasons set forth in affidavit filed herewith, and made a part hereof.

Dubuque & Sioux City Railroad Company—

By W'M B. ALLISON, *its Att'y.*

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

(Endorsed as follows:) The Des Moines Navigation and Railroad pl'ff in error, No. 221, vs. Calvin Burr. Motion on behalf of Dubuque

and Sioux City Railroad Company for leave intervene. Filed 8 Feb., 1866. W'm B. Allison.

Supreme Court of the United States, No. 133, December term, 1866.

THE DES MOINES NAVIGATION AND RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR, DEF'T IN ERROR. } No. 133. Land.

Motion on behalf of the "Iowa Homestead Company" and their grantees to intervene for the purpose of argument.

Now, to wit, Dec'r 14th, 1866, comes the "Iowa Homestead Company" and their grantees, of the State of Iowa, and by their attorney, John F. Dunscombe, moves the court to permit said parties to intervene in this cause for the purpose of argument on the part of def't in in error, and for cause state—

1. That said company and their grantees are directly interested in the decision of this cause in this, to wit, said company and their grantees claim to be owners in fee-simple of the land named in the pleadings, and of over 50,000 acres of other lands, the title to which is involved in the decision of the legal questions involved in this suit.

(Signed) J. F. DUNSCOMBE,
Att'y for Intervenors.

True copy. Test:
[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

(Endorsed as follows:) No. 133. Sup. Court U. S. Des Moines Navigation and Railroad Co., pl'ff in error, vs. Calvin Burr. Motion on part of Iowa Homestead Co. to intervene for argument. Filed 14th Dec., 1866. Granted. J. F. Dunscombe, for intervenor.

419 Supreme Court of the United States, December term, 1865.

J. W. Gilbert. Platt Smith, (for intervenor.)
Cha's Tracy, Litchfield.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR, *vs.* THE DES MOINES NAVIGATION & RAILROAD Company. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

Docket entries.

1865.	Nov. 27.	Record received and filed.
"	Dec. 21.	Stipulation to submit, filed.
"	" "	Brief of Gilbert for pl'ff in error, filed.
"	" "	Brief of Litchfield for def't in error, filed.
1866.	Jan. 2nd.	Submitted under 20th rule.
"	Feb'y 8th.	Motion of Mr. Allison for leave to intervene and also for leave to file printed argument, filed.

"	"	"	Affidavit of J. M. McKinley, filed.
"	"	13.	Leave granted intervenor to file argument before 1st of March.
"	"	21.	Brief of Smith for intervenor, filed.
"	"	26.	On motion of Mr. B. C. Cook, leave granted him to file argument before 1st March.
"	Mar.	12.	Ordered to be continued to the next term, with leave to any of the parties to file additional arguments.
"	"	23.	Brief of B. C. Cook, for intervenor, filed.

No. 204 of December term, 1866.

Docket entries.—Continued.

1866.	Dec.	4.	Reply brief of Litchfield, filed.
1866.	Dec.	17.	Ordered that counsel have leave to argue this case, with No. 133, if desired.
1867.	May	13.	Adjudged to be affirmed with costs.

Extracts from minutes.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303. Dec. term, 1863.

This cause was submitted to the consideration of the court on the record and printed arguments by Mr. Gilbert, of counsel for the plaintiff in error, and by Mr. Litchfield, for the defendant in error.

2 JANUARY, 1866.

WOLCOTT
vs.
DES MOINES NAV. & R. R. CO.

On consideration of motion made and affidavit filed in this 420 cause on the 8th instant, it is now here ordered by the court that leave be, and the same is hereby, granted counsel of The Dubuque & Sioux City Railroad Company to file and submit a printed argument in this cause at any time before the 1st day of March next.

13TH FEBRUARY, 1866.

WOLCOTT
vs.
DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

On motion of Mr. B. C. Cook, leave granted him to file a printed argument in this cause, by the first Monday of March next.

26TH FEBRUARY, 1866.

WOLCOTT
vs.
DES MOINES NAV. & R. R. CO. } No. 303.

It is now here ordered by the court that this cause be, and the same is hereby, continued to the next term of this court, with leave to any of the parties to file additional arguments.

12TH MARCH, 1866.

SAM'L G. WOLCOTT, PL'FF IN ERROR,
vs.
DES MOINES NAVIGATION & RAILROAD COMPANY.
No. 204 of December term, 1866.

Extracts of minutes.—Continued.

* * * * * * * *

Ordered by the court that this cause be argued by cou'sel if desired with No. 133, when reached in the regular call of the docket.
17TH DECEMBER, 1866.

No. 204. Supreme Court of the United States, December term, 1866.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Nelson.
13TH MAY, 1867.

421 Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extracts from minutes, and judgment.
Test:
[SEAL.]

D. W. MIDDLETON,
Clerk Sup. Court U. S.

Supreme Court of the United States, December term, 1865.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company.
No. 303.

The counsel for the plaintiff and the counsel for the defendants hereby agree to submit and do submit this case upon printed arguments.
Dated December 18, 1865.

(Signed) J. W. GILBERT,
Of Counsel for the Plaintiff.

(Signed) E. C. LITCHFIELD,
Of Counsel for Defendants.

True copy. Test:
[SEAL.]

D. W. MIDDLETON,
Clerk Supreme Court U. S.

(Endorsed as follows:) No. 204. Stipulation to submit. Filed Dec. 21, 1865.

Supreme Court of the United States, December term, 1865.

SAMUEL G. WOLCOTT, PL'FF IN ERROR,
vs.
DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

In error to the circuit court of the United States for southern district of New York.

The Dubuque & Sioux City Railroad Company, a corporation, &c., by W'm B. Allison, its att'y, now comes and moves the court for leave to intervene in the above-entitled cause as a party thereto, and also for leave to file an argument in same for reasons set forth in affidavits filed herewith and made a part hereof.

Dubuque and Sioux City Railroad Company.
By W'M B. ALLISON, *its Att'y.*

FEB'Y 7TH, 1866.

True copy. Test:
[SEAL.]
D. W. MIDDLETON
Clerk Supreme Court, U. S.

(Endorsed as follows:) No. 303. Sam'l G. Wolcott, pl'ff in error. No. 303, vs. Des Moines Navigation and Railroad Company. Motion for leave to interven', on behalf of Dubuque & Sioux City Railroad Company. Filed 8th Feb., 1866. W. B. Allison.

422 Supreme Court of the United States, December term, 1865.

SAMUEL G. WOLCOTT, PL'FF IN ERROR,
vs.
DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

I, James M. McKinley, on oath, say that I am attorney and counsellor at law, and an assistant attorney for The Dubuque & Sioux City R. R. Co.; that, within the past few days, and not before, I have had an opportunity to examine the record in the above-named case; that to my mind the said record shows the attorneys of said Wolcott either did not fully understand their case, or the nature of the party opposed to them, or had been instructed not to litigate the case in good faith; that the question involved in said case is one on which depends the title which The Dubuque & Sioux City Railroad Company acquired to about seventy-seven thousand acres of land to aid in the construction of said road; that a final decision of the above-named case against the plaintiff in error, would tend to greatly prejudice the said Dubuque & Sioux City R. R. Co., although they are not a party to said case; that I have reason to fear the decision of the court below (near bottom of page 61 of the record) was obtained on substantially an ex-parte presentation

of the case, and *are* greatly prejudicial to the interest of The Dubuque & Sioux City R. R. Co., and is contrary to what would have been the decision of the court on a proper presentation and argument of the case; and, as aforesaid, that an affirmance of the judgment of the court below would prejudice the title acquired by the said Dubuque & Sioux City R. R. Co., to said seventy-seven thousand acres of land, and the title of their grantees.

(Signed) JAMES M. McKINLAY.

Subscribed and sworn to by James M. McKinlay, before me, clerk of *of* the district court of Dubuque County, Iowa, Feb. 1, 1856.

Witness my hand and official seal.

[SEAL.] (S'g'd) M. LEPPER, *Clerk.*

[Five-cent stamp.]

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court, U. S.

(Endorsed as follows:) Sam'l G. Wolcott, pl'ff in error, No. 303, vs. Des Moines Navigation and Railroad Company. Affidavit. James M. McKinley. Read on the hearing, and filed Oct. 19th, 1870. George B. Corkhill, clerk.

The President of the United States of America to all to whom these presents shall come, greeting:

Know ye that we, having inspected the records and files of the circuit court of the United States for the southern district of New York, do find certain paper-writings there, remaining of record, in the words and figures following, to wit:

423 Names of parties against whom judgment has been obtained.	Names of parties in whose favor judgment has been obtained.	Judgment—how obtained.	Amount of debt and damages.	Time of signing roll.	Time of filing roll.	Attorneys' names.	When satisfied.
Wolcott, Sam'l G.	The Des Moines Navigation & R. R. Co.	Verdict.	$27 30-100	Oct. 31st, 1865.	Oct. 31st, 1865.	Tracy & Talmadge.	

All of which we have caused, by these presents, to be exemplified, and the seal of the said circuit court to be hereunto affixed.

{SEAL OF U. S. CIRCUIT COURT SOUTHERN DIST. OF NEW YORK.} Witness the Honorable Sam'l Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 22d day of September, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth.

KENNETH G. WHITE, *Clerk.*

I, Samuel Blatchford, judge of the said circuit court, do hereby certify that the foregoing exemplification is in due form of law.

SAM'L BLATCHFORD.

(Endorsed:) Read on the hearing, and filed Oct. 19th, 1870. George B. Corkhill, clerk.

STATE OF IOWA,
Executive Department:

To the Hon. J. D. Cox, Secretary of the Interior, Washington, D. C.:

I, Samuel Merrill, governor of the State of Iowa, do hereby certify that the Cedar Rapids and Missouri River Railroad, a railroad corporation organized and existing under the laws of the State of Iowa, has built a branch railroad from the town of Lyons, in the State of Iowa, to connect with the main line of the Chicago, Iowa and Nebraska Railroad, in the town of Clinton, in said State; and that the said branch railroad is built from Pearl street, in Lyons City aforesaid, to a point of intersection with the said Chicago, Iowa and Nebraska Railroad within the corporate limits of the said city of Clinton, with all the necessary switches and side tracks that the business of the said town of Lyons requires; that the same is of a *guage* of four feet eight and one-half inches, being the same as the Chicago, Iowa and Nebraska Railroad, and in all respects of equal quality with the last-mentioned railroad; that the said branch railroad was built and constructed by the said Cedar Rapids and Missouri River Railroad Company in the years 1867 and 1868, and that the same is run and operated by the Chicago and Northwestern Railway Company, the lessee of the Chicago, Iowa & Nebraska Railroad, in close connection with the trains on the said last-mentioned railroad; and that the said branch railroad has been built and is now operated in conformity with the laws of the United States and of the State of Iowa relating thereto.

[SEAL.] In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa. Ex-
424 ecuted in duplicate, of which one copy is delivered to the said Cedar Rapids & Missouri River R. R. Company.

Done at Des , in the State of Iowa, on the twenty-first day of October, 1870. In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

(Signed) SAM'L MERRILL.

By the governor:

ED. WRIGHT,
Sec't'y of State.

STATE OF IOWA, *ss:*)

I, Ed. Wright, sec't'y of the State of Iowa, do hereby certify that the foregoing is a true and complete copy of the original now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the official seal of the State of Iowa, this twenty-eighth day of October, 1870.

[SEAL.] ED. WRIGHT,
Secretary of State.

(Endorsed as follows:) W'm Baker vs. Jesse Williams. Governor's certificate as to the building of the Lyons branch. Filed by consent in open court Oct. 21, 1870. George B. Corkhill, clerk.

On the 19th day of October, A. D. 1870, came, by their solicitors, the

said parties in the said entitled cause, and filed in said clerk's office their stipulation as to the facts on the part of Williams, which stipulation was in the words and figures following, to wit:

United States circuit court, district of Iowa.

W'M BAKER, COMP'T, *v.* JESSE WILLIAMS, RESPON'T.	Original bill in equity.
JESSE WILLIAMS, COMP'T, *v.* W'M BAKER, RESPON'T.	Cross-bill in equity.

It is stipulated and agreed by the respective parties to the above actions that the copies of the reports and documents hereto attached, and purporting to be copies of the original reports and documents from archives of the State of Iowa, are true copies of the originals of which they respectively purport to be copies, and that all such copies may be read in evidence by and on behalf of said Williams on the trial *and* of said actions without any other or further proof than this stipulation, with the same effect as though they were the original instruments, legally proved; subject, however, to the same objections that might be taken to the originals themselves for immateriality and irrelevancy.

12th Sept., 1870.

ISAAC COOK &
PLATT SMITH,
Solicitors for Williams.
FINCH & RIVERS,
Sol'rs for W'm Baker.

425 *Report of the De' Moine' River Improvement and Navigation Company.*

OT'UMWA, *Nov. 15th*, 1856.

To his Excellency JAMES W. GRIMES,
Governor of the State of Iowa.

SIR: The De' Moine' Navigation and Railroad Company beg herewith respectfully to present to you, and, through you, to the general assembly, the accompanying full exhibit of its affairs and financial condition. In order to a correct understanding of the operations of the company, and a just appreciation of the causes which have disappointed its expectations of a rapid completion of the work, it is necessary to give a brief narration of its history.

Almost from the first it has had to encounter serious obstacles, which have not only embarrassed its most earnest efforts, but have impaired the confidence of the people, who, not aware of the justifying circumstances, have naturally attributed the results to inaction or bad faith.

The company was organized under the laws of Iowa, May 6, 1854, and, having purchased their rights from the parties who then held the contract from the State, on the 9th day of June, 1854, entered directly into a new contract with the State officers. With this contract, which was published in the journal of the next legislature, you are doubtless familiar. It was based upon the public assumption that the grant of Congress for the improvement of the river covered the unappropriated odd sections to the source of the river, and comprised somewhat over a million acres.

The State agreed to sell these lands to the company for $1,300,000, to be expended upon the improvement and in payment of the State debt then outstanding; the lands to be conveyed to the company at the rate of 24,000 acres whenever the disbursements should reach $30,000. The company at once adjusted and paid the State debt to the amount of over $70,000, and immediately entered upon the necessary surveys of the river, which were indispensable preliminaries to the active work of construction.

As early as the ensuing May nearly half the work was prepared for "letting," and was put under contract.

At this point information was received that the general assembly had passed an act in derogation of the title which had been agreed to be given to the company, and requiring that no patent should issue to the company, except with a derogatory clause inserted. (Vide sec. 8 of chapter 153, page 224, Laws of 1854.)

The immediate effect of this was to dishearten the friends of the enterprise by the impression that the legislative body was disposed to embarrass it; but this was passed over in the belief that, as the work progressed, a more liberal feeling would prevail, and the construction was urged with as much vigor as the season admitted of. An unusually inclement winter retarded the work, though the surveys of the remaining portion of the river was continued to completion, and the balance of the work was prepared for letting.

Early in the winter rumors became rife that the General Government intended to take the position that the grant did not extend beyond the Raccoon Fork. Application was at once made to the General Land Office for the transfer of the remaining lands to the State, and the Commissioner of the General Land Office promptly responded that he held the grant as not extending above Fort Des Moines.

426 In the meantime the locks and dams to Fort Des Moines had been advertised for "letting." An immediate appeal was taken from the decision of the Commissioner to the Secretary of the Interior, who sustained his subordinate, and thence an appeal was taken to the President of the United States, by whom the matter was referred to the Attorney General. Much delay followed, though the Government was informed of the immediate necessity of a decision, as the "lettings" of the new work were then immediately pending. The Attorney General and other members of the Cabinet urged upon the company not to permit the pendency of this question to interfere with the lettings, but to proceed, upon the assurance that the action of the Land Office would not be sustained. To this were added the solicitations of your Senators and Representatives in Congress and the State officers having charge of the improvement to the same effect, who assiduously co-operated with the officers of the company in their efforts to avert the blow so insiduously aimed against the greatest interests of the State. The company, accordingly, proceeded and allotted the work to contractors, but it did not feel at liberty to enter upon the prosecution of the new work whilst a question striking at the validity of the whole grant was in doubt. Again the company pressed upon the Government a settlement of the question, but it was not until June that a decision was given, and then it was that the grant might be construed as extending to the north line of the State, provided the State should release the lands lying above. Thus the matters have stood until this time, the Government refusing to recognize the grant as extending beyond the north line of the State (cutting off about 310,000 acres,) and refusing to recognize the grant as extending beyond the lands already approved to

the State, except on the condition of the execution of a release of the balance. In this condition of the grant, the company felt that good faith towards the State required of it, a suspension of new work until the wishes of the State in the premises could be ascertained.

The progress of the work having demonstrated the necessity of modifications in the proposed plans of construction, supplemental contracts were entered into with the officers of the improvement, which having been filed in the office of the secretary of state, were submitted to the late legislature, and accompany this statement. The company has expended in payment of State indebtedness and construction (exclusive of salaries of its officers and office expenses) more than the sum of $360,914 19, on account of which there have been certified to it by the register and commissioner of the Des Moines improvement two hundred and five thousand four hundred and eighty-nine and twenty-three one-hundredths acres of land under its contract, leaving over a hundred thousand dollars due from the State, and for which it is in arrears to the company. To pay this would more than exhaust the balance of the lands, the title to which has as yet been transferred by the General Government to the State, excluding those which have been erroneously approved, and the entire balance of the grant is embarrassed by the refusal of the General Government to make more transfers to the State, except on condition of a release of the lands north of the State line.

The company availed itself of the assembling of the legislature in extra session, in July last, to lay before that body these facts, and procure their request, that the grant should be sustained, and such other action as the emergency of the interest of the State required, but in the press of business upon their attention no action was taken.

427 It again presents these facts for your consideration. By reason of their existence the company has not been able to make that progress with the work that it wished and the public expected. It has endeavored to conduct all its operations with a strict regard to the interests of the State, and it is conscious of having been actuated by only honorable intentions. The embarrassments which have been narrated, and others arising from two seasons of almost universal and often fatal sickness of contractors and men, and from difference of opinion amongst the officers of the State, as to the construction of some portions of the contract have entailed much loss upon the company in many ways, but it is still desirous of completing the work in the true spirit of its contract, and to this end, or any other, it is ready to concur in any proper action which the wisdom and justice of your excellency and the general assembly may devise.

The accompanying exhibits are herewith respectfully presented, marked as follows:

No. 1. Report of Alvah Hunt, treasurer, showing the financial operations and resourses of the company.

No. 2. Report of Ed. H. Tracy, chief engineer, upon the present condition of the work, with an abstract of the estimated cost of completing it.

No. 3. Opinion of the Attorney General of the United States upon the construction of the grant, and the order of the Secretary of the Interior thereon.

No. 4. Contracts of the company with the State.

All of which is respectfully submitted.

W. C. JOHNSON,
President De Moine N. & R. R. Co.

Treasurer's report.

EXHIBIT No. 1.

A. Hunt, treasurer, in account with The Des Moines Navigation and Railroad Company.

1856.				
Nov. 15.	To cash received to this date on account of subscription of $1,000,000 for bonds, (balanc' payable in installments whenever called for)		$280,600 00	
" "	To cash received to this date on account of stock subscribed		$168,075 00	
" "	To cash received to this date from the sale of lands in Iowa		7,619 06	
" "	To cash received to this date for installments on bond & stock subscriptions, and for interest on amounts loaned on call		6,528 80	
			$462,822 86	
" "	To cash in stock, issued to I. J. Speed, j'r, for relinquishing his contract, made with Henry O'Reily	50,000 00		
" "	To cash in stock allowed Bonney & Whittlesey, for relinquishing their contract made with the State for the Keosauqua work	$5,000 00		
428				
" "	To cash allowed Jno. T. Clark for services	1,000 00		
			$56,000 00	
	Total		518,822 86	

A. Hunt, treasurer, in account with The Des Moines Navigation and Railroad Company.

1856.			
Nov. 15.	By cash paid on account of State liabilities		70,053 33
" "	By cash paid for construction of locks and dams; for engineering; for advances for materials not yet put into the work; for lands for location of locks and dams, and for salaries of registers and commissioners		290,860 86
			360,914 19
" "	By cash paid for salaries of officers of the company, office expenses and furniture, and interest on bonds of th' co		20,133 85
" "	By cash allowed H. O'Reily on original purchase from him by the company, applied on first installment on this stock		15,000 00
	This stock, (excepting 5 shares, on which		

\$5 per share has been paid) has all been sold by O'Reily.

" " By cash allowed I. J. Speed, for relinquishing his contract made with O'Reily, applied on stocks given Speed \$50,000 00

" " By cash allowed Bonney and Whittlesey, for relinquishing their contract made with the State, applied on stock given him 5,000

" " By cash allowed Jno. T. Clark for services, applied on stock given him 1,000 56,000 00

452,048 04

Cash on hand Nov. 15, 1856 ..... \$66,774 82

A. HUNT, *Treasurer.*

A. Hunt, treasurer, in account with The Des Moines Navigation and Railroad Company.

STATE OF NEW YORK,
City and County of New York, ss:

Alvah Hunt, treasurer of Des Moines Navigation and Railroad Company, being duly sworn, deposes and says that the foregoing statement is correct and true, as deponent verily believes.

A. HUNT.

429 Sworn to before me this 22d day of November, 1856.

JOHN J. CHRISTIE,
Com'r of Deeds.

Resources.

Cash on hand Nov. 15th, 1856, as per statement rendered	66,774 82
Balance due on bond subscription of \$1,000,000 on which has been paid \$280,600; balance payable whenever called for	719,400 00
197,997 $\frac{83}{100}$ths acres of land, held by the company, unsold at \$1 25 per acre	247,497 29
	1,033,672 11

Amount of bonds provided to be issued if necessary	1,000,000
Amount of stock that may be issued hereafter	1,000,000
	\$2,000,000

A. HUNT, *Treasurer.*

NEW YORK, *November 15th*, 1856.

Abstract of the estimated cost of the Des Moines River improvement from its mouth to Fort Des Moines.

Locations.	Extra bulkh'ds.	Embank't for guard bar.	Lock and dam, &c.	Total.
Work below St. Francisville	.....	.....	$75,000	
St. Francisville ..... work	$4,200	$700	49,100	
Belfast ..... "	4,500	2,400	54,700	
Croton, Bonapart, & Bentonsport ..... "	.....	.....	25,000	
Plymouth ..... "	.....	.....	37,000	
Keosauqua ..... "	.....	.....	25,000	
Pittsburg ..... "	4,200	700	49,200	
Litchfield ..... "	4,200	700	49,500	
Orville ..... "	4,200	2,300	51,500	
Jordon ..... "	4,200	700	61,500	
Alpine ..... "	4,200	6,000	48,000	
Wiley ..... "	4,200	7,200	44,800	
Sugar Creek ..... "	4,200	9,000	43,100	
Ottumwa ..... "	.....	8,400	32,300	
Camp ..... "	3,700	6,000	43,700	
Bell's ..... "	4,200	2,400	51,700	
Johnsonsport ..... "	4,200	3,000	53,500	
Neida ..... "	4,200	6,000	42,700	
Rocky Ripple ..... "	4,200	6,000	46,700	
Delashmutt ..... "	4,200	3,600	51,100	
Bellefontaine ..... "	4,200	9,600	42,900	
Coal Bank ..... "	4,200	12,000	43,500	
George ..... "	4,200	12,000	43,200	
Amsterdam ..... "	4,200	12,000	48,500	
White Breast ..... "	3,700	8,400	44,400	
Red Rock ..... "	4,200	7,700	51,300	
Big Bend ..... "	4,200	19,200	55,500	
Bennington ..... "	4,200	21,600	56,600	
Lafayette ..... "	4,200	2,400	54,900	
Adelphi ..... "	4,200	20,400	51,000	
Yellow Bank ..... "	4,200	21,600	54,000	
Newcomer ..... "	4,200	10,800	53,700	
Agency Prairie ..... "	4,200	10,800	53,700	
Excavating channel below lock at Keosauqua and Alpine	.....	.....	15,000	
	116,900	$233,600	1,603,300	
Add for engineering and contingencies, 10 per cent	11,690	23,360	160,330	
	128,590	$256,960	1,273,630	2,149,180

430 OTTUMWA, *November* 19, 1856.

To the president of the De' Moine' Navigation and Railroad Comp'y.

SIR: I' accordance with your instructions I have prepared an estimate of the cost of completing the slack-water navigation of the Des Moines River from its mouth, on the Mississippi River, to Fort Des Moines, (Raccoon Fork,) and herewith present the same:

The estimate contemplates improving the present channel of the river from the Mississippi to St. Francisville, a distance of about twelve miles, without locks. It is proposed to remove the snags and trees from the present bed of the river and deepen the channel in several shoal places by dredging and confining the water by means of wing-dams, in its lower stages, to a narrow channel. From St. Francisville to Fort Des Moines the estimate is based upon building locks and dams. The locks are estimated as stone locks, and the dams as timber and stone with wooden abutments on the side of the river opposite the locks.

The present state of the work: Since the 1st of August we have had a party at work with the proper tools and fixtures clearing snags and trees from the channel of the river below St. Francisville. They have cleared a channel wide enough for the passage of steamboats from the Mississippi to near the Big Yellow Banks, a distance of about six miles, and we are now going on vigorously with the work beyond that point.

We have also built a most substantial dredging machine, which is at

work excavating channels through the bars on the lower part of the river. It is intended to keep the snag'ing and dredging going on until the river is closed by ice. If the fall and winter are open, it is expected to clear the snags from the channel as far as St. Francisville by the opening of navigation in the spring.

At St Francisville the coffer-dam is built, and the excavation of the pit nearly completed. The water-sills of the lock are in, and the masonry started. A large amount of materials are now delivered and the work is being prosecuted with vigor.

At Belfast, the 2d lock, the walls are now built above high-water, and can be completed early next season. The work has been energetically prosecuted during the low water of this year.

At Croton, the 3d lock is now in working order, though it is one of the short locks, and will eventually have to be lengthened and some additional work done to the dam.

At Farmington, the 4th lock, the walls are built to nearly their full height, and there is stone enough prepared to finish them. It was expected to finish this lock this season, but owing to the sickness during the months of August, September, and October, the contractors were not able to keep the requisite force at work to complete it. It can be finished early next season, and the dam can be built during the low water of next summer.

At Bonapart, the 5th, and Bentonsport, the 6th, locks and dams are in navigable order, though the locks are short and will eventually have to be lengthened, and the dams require some more work to complete them.

At Keosauqua, the 7th lock, the masonry is well started, and, with proper energy on the part of the sub-contractors, the work can be completed and brought into use by the time of the June rise of the river to this place.

At Pittsburg, the 8th lock, the coffer-dam is now in, but I have been unable to get any masonry laid this year.

431 At Litchfield, the 9th lock, the masonry is started, and it is hoped that it will be completed early next year.

At Orville, the 10th lock, the masonry is started, and it is hoped that it will be completed next year.

At Iowaville or Jordon's, the 11th lock, we had to change the location of the lock a short distance to get a good foundation. The masonry of the is started, and nearly all of the materials for the lock are prepared, and it is expected to complete it early next season.

At Alpine, the 12th lock, the foundation for the lock is now about prepared, and the masonry can be started early in the spring.

At White Breast the coffer-dam is in, and the foundation for the lock is nearly prepared.

Below Alpine a very large amount of materials is now prepared, and there will be no difficulty in procuring all the balance that will be required to complete the work on this part of the line during the coming winter.

The water in the river has been low this season, but the workmen have been very sickly. Some of the time more than one half of our men, between St. Francisville and Ottumwa, have been sick at the same time, and for a short time nearly all the men were sick at once. This sickness has very materially retarded the work.

Respectfully yours,

EDW. H. TRACY,
Chief Engineer D. N. & R. R. Co.

EXHIBIT No. 3.

Opinion of Attorney General in the matter of the Des Moines grant, and the order of the Secretary of the Interior.

ATTORNEY'S GENERAL'S OFFICE, *May* 29, 1856.

SIR: Your communication of the 7th ultimo referred to me certain questions which have arisen out of a grant of lands, made by Congress to the State of Iowa, for the improvement of the navigation of the river Des Moines, in that State.

It appearing on a cursory examination of the subject, that the State and a company to which it had committed the construction of the contemplated works are largely interested in the questions to be resolved, notice of reference was given and further examination suspended in order that arguments might be submitted in behalf either of the State of Iowa or of said company. Those arguments came to hand on the 20th instant, since which day the matter has remained under advisement.

The history of the case exhibits a spectacle of vacillation and contradiction of opinion on the part of the Government which it is humiliating to contemplate, and which constitutes all there is really embarrassing in the points now to be determined.

At the foundation is the act of Congress, the essential part of which is in the following words:

"That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory, one equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, encumbered, or appropriated) in a strip of five miles in width of each side of said river, to be selected within said Territory by an agent or agents, to be ap-
432 pointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

"SEC. 2. * * * That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said land as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

"SEC. 3. * * * That the said river Des Moines shall be and forever remain a public highway, for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States, or persons in their service, passing through or along the same. * * * * * * *

"SEC. 4. * * * That, whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State, for the purpose contemplated in this act, and no other." * * * *

This act originated in a bill introduced into the House of Representatives by the Hon. A. C. Dodge, Delegate of the Territory of Iowa, referred to the Committee on Public Lands, and reported and passed substantially in the same words, in so far as regards the grant, as they now stand in the statute book.

While the bill was pending before the committee, Mr. Dodge obtained from the Commissioner of Public Lands (Mr. Shields) a report of the quantity of land which the grant would embrace, which he stated at 261,000 acres, expressly assuming that the range of land proposed to be granted was limited to the line "from its mouth to the Raccoon Fork." That report accompanied the report of the committee, and was reasoned upon therein, as the basis of the bill which they presented to the House.

Notification of this act was made to the governor of Iowa by the Commissioner of Public Lands soon after its passage, by letter, which assumed that the range of selection was limited as above stated, and transmitted plans in conformity therewith to guide the State in making selections. The agent proceeded to make the selections within the limits defined, and information to that effect was communicated to the Commissioner by that agent and by the governor.

In all this series of acts there seemed to be ample contemporaneous exposition of the law.

A suggestion of doubt, whether the grant did not extend above the Raccoon Fork, first appears in a letter from the Commissioner, (Mr. Young,) dated February 23, 1848, which doubt, however, as appears from a letter to him, dated January 8, 1849, he had then ceased to entertain. Indeed, by proclamation of President Polk, under date of June 19, 1848, countersigned by the same Commissioner, the lands on the Des Moines, above the Rac'oon Fork, were brought into market, with advertisements as usual, in the State of Iowa, and a considerable quantity of land was entered on sale, or by pre-emption, or land warrants, which would have been covered by the grant if it extended above that fork.

433 In this stage of the case, the delegation of the State of Iowa, in Congress, on the 8th day of January, 1849, addressed a letter to the Secretary of the Treasury, to whose Department the General Land Office then belonged, claiming that the State was entitled along the whole course of the Des Moines to its source, and requesting corresponding action on the part of the Government. To this letter the Secretary replied, under date of March 2, 1849, expressing the opinion that the grant "extends on both sides of the river, from its source to its mouth, but not into lands on the river in the State of Missouri;" and on the same day he communicated a copy of the letter, as his decision on the question, to the Commissioner of the Public Lands.

And thus things stood when immediately afterwards, the supervision of the public lands passed to the new Secretary of the Interior, Mr. Ewing.

Subsequently, a list of selections, made up in conformity with Mr. Walker's opinion, having been reported by the Commissioner to Mr. Ewing for confirmation by the latter, he refused it, upon the conviction expressed by him that the grant does not extend to the lands above the Rac'oon Fork. He considered, as undoubtedly he might lawfully do, that Mr. Walker's opinion, not having been carried into effect, being an *unexpected* opinion merely, was open to revision, and he decided to suspend sales of the lands embraced in the claim of the State, in order to leave opportunity to Congress to "extend the grant" if it should see fit.

Mr. Ewing's decision is dated April 6th, 1850, and appeal was taken therefrom to the President, (General Taylor.) He referred the question to the Attorney General, (Mr. Johnson,) who, in his opinion, dated July

19th, 1850, came to the conclusion that the grant applied to the lands above the Rac'oon Fork. (Opinions, ed. 1851, p. 2149.)

It does not appear that this opinion was acted on so as to dispose of the question, for, in a paper addressed by the Commissioner of Public Lands (Mr. Butterfield) to the President, dated September 26th, 1850 the opinion of Mr. Johnson is reviewed, and objections to its conclusions are submitted; and thus the question remained open at the accession of the next President, (Mr. Fillmore.)

During the administration the first material step in the business consists of a reference of the case to the Attorney General, (Mr. Crittenden,) followed by an opinion of the latter, dated December 3d, 1850, to the effect that the questions involved were not of a nature to call for or justify the present interposition of the President of the United States, they being appropriate only to the jurisdiction of the Secretary of the Interior. (Opinions, Farnham's ed., vol. v., p 275.)

It would appear, from this conclusion, that Mr. Crittenden did not become aware that the matter was regularly before the President on appeal from the decision of the Secretary of the Interior.

Thus the papers went back to the Interior Department, and the Secretary (Mr. Stuart) referred the subject to the Attorney General, (Mr. Crittenden,) requesting his official opinion on these points, namely: 1. The effect of Mr. Walker's letter. 2. That of Mr. Johnson's opinion. And, 3. The true construction of the disputed grant.

Mr. Crittenden, by letter of June 30th, 1851, replied, that, in his opinion, the letter of Mr. Walker was not an act done, but an opinion expressed, and, therefore, had no binding effect on his successors; that the opinion of Attorney General Johnson was but advisory, having no compulsory effect on the Secretary to whom it was addressed, and
434 that the grant, in his judgment, was limited to the lands below the Rac'oon Fork. (Opinions, Farnham's ed., vol. v, p. 390.)

On the 26th of the same July, Mr. Stuart communicated Mr. Crittenden's opinion to the Commissioner, with expression of concurrence in its conclusions, but permitting Mr. Ewing's order to withhold the lands from market to continue in force "until the end of the approaching session of Congress."

But, on the 26th of October, he again addressed the Commissioner on the subject, and directed the selections of the State above Rac'oon Fork to be reported for his approval, assigning the following reasons:

"I have considered and carefully reviewed my decision of the 26th of July last, and, in doing so, find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country; and although my own opinions as to the true construction of the grant are unchanged, yet in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary."

It would appear from this, that Mr. Stuart was overruled, for he expressly says that his own opinion of the law remains unchanged, and the reasons which he gives for acting against the law, as he understands it, and as expounded by Attorney General Crittenden, are not satisfac-

tory, and would equally well apply to any other controverted subject before the Department.

However this may be, here was a decision, and, in conformity with it, three lists were made out at the Land Office, namely:

List No. 1. "Showing the tracts falling within the limits of the Des Moines grant above the Rac'oon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that such grant extended to the north boundary of the State."

List No. 2. Showing tracts disposed of within those limits, in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the forks.

List No. 3. Showing the vacant lands subject to the claim of the State.

To the latter, Mr. Stuart appended the following order:

"DEPARTMENT OF THE INTERIOR, *October* 30, 1851.

"The selections embraced in the within list, (No. 3,) are hereby approved, in accordance with the views expressed in my letter of the 29th inst., to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known at the Land Office by the agents of the State, it being expressly understood that this approval co'veys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office communicating the decision of Mr. Secretary Walker to the effect that the grant extended above the Rac'oon Fork.

"ALEX'R H. H. STUART, *Secretary.*"

435 Continuing to act on the same premises of judgment, the Land Office, it seems, reported another list to you, in the following terms:

"A list showing the vacant lands in the odd-numbered sections above the Rac'oon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior, of the 29th of October, 1851, which have not heretofore been approved."

Which list you approved in these words:

"DEPARTMENT OF THE INTERIOR, *December* 17*th*, 1853.

"The selections in the within list are hereby approved to the State of Iowa, under the act of 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

"R. MCCLELLAND, *Secretary.*"

It is true, as stated in your communication to me, your attention was not called to the general question involved; but still the act was done.

To the administrative history of the case, as thus presented, certain collateral facts are now to be added, in order to the full understanding of all its relations.

Of lands included within the grant, the amount selected and approved is 321,000 acres below the fork.

Proceeding above it, we at length come to two confluents of the Des Moines. One of them, in a map before me, is denominated the "East

Fork of the Des Moines." This stream flows out of the lake situated on the line which divides the Territory of Minnesota from the State of Iowa, and the stream itself is wholly within that State. The other confluent has its origin far up in the Territory of Minnesota, at a distance of—say eighty five miles north of the dividing line; and this, also, on the same map, bears the name of "Des Moines."

In a map before me, published in 1844, and founded on Nickolett's, the main river is called "Keosagua, or Des Moines," only to a point just above the Rac'oon Fork, beyond which it is called the river of the Sioux. This may serve to explain the phraseology of the act, and to justify the original construction placed on the grant by the Government.

Of lands embraced in the claim of the State, and within its limits, the quantity above the Rac'oon Fork is 560,000 acres, of which 260,347 acres have already been passed over to the State by Mr. Stuart and by yourself, leaving less than 300,000 acres, now in controversy between the United States and the State, within the limits of the State.

Add to this an estimated quantity of 272,000 acres on the west branch of the Des Moines, north of the line of Iowa, and in Minnesota.

The Des Moines, it may be further added, according to a statement before me, made up at the Land Office, can scarcely be considered as a navigable river in the upper part of its course above the Rac'oon Fork.

On these facts you present the following questions, namely:

1. Whether the decision of Mr. Stuart, and the consequent action of the Department down to the present time, are conclusive in favor of the claim of the State of Iowa?

2. Whether, if it be an open question, the grant extends, in my opinion, above the Rac'oon Fork?

436 3. Whether it is to be considered as reaching into the Territory of Minnesota?

I proceed to state such views as occur to me on the whole subject to be applied afterwards to the particular questions which you propound.

I suppose it must be conceded that an opinion of the Attorney General is not conclusive, that is, it is not compulsory on the President, or even on a head of Department.

It is inconvenient, however, to have conflict of opinion between the Attorney General and a head of Department; and that inconvenience is placed in the strongest light by the facts of this case, where the affirmative opinion of one Attorney General went disregarded by one Secretary, and a negative opinion of another Attorney General by the succeeding Secretary. There could be no more flagrant example of confusion of opinion and action.

A Secretary, undoubtedly, is entitled to have and to act upon his conscientious opinion of a question, even after he has taken the opinion of the Attorney General; but the interest of parties and the credit of the Government require decision; and it would seem that any such conflict of opinion between the Secretary asking, and the Attorney General giving, official advice, should be referred *to* once to their common superior, the President, in order that the particular question of administration itself may receive the authoritative decision of the Executive Department. That did not happen in this case in either of its stages; and thus all the embarrassments of contradicting opinions and acts, with the uncertainty of present duty which they create, are transmitted to you for determination.

Is it necessary now for me to weigh the reasons of Mr. Crittenden against the reasons assigned by Mr. Johnson, and conclude which of them shall be overruled by me? That would be an unwelcome task.

It must be admitted, on the mass of argument before me, that there are two sides to the question of the true legal intendment of the act of Congress. At the same time, it is due to frankness to say that if constrained to judge between them, the inclinations of my mind would be to the side accepted by Mr. Crittenden, because the language of the statute admits of such construction, and because, on a retrospect of the history of the case, it is impossible for me to doubt as to the actual intention of Congress. That is, if the question were one of new impression, the tendency of my judgment would be to say that the grant is limited to the line of the improvements, namely, the river Des Moines below the Rac'oon Fork.

But it is not a question of new impression; nay, it has passed beyond opinion into action, and at this point of time it is more material to consider what has been done than what has been thought on the subject-matter. I wish, if possible, to find something firm to stand upon, in what has been done.

In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the questions involved being suggested to you, was in each case, done by the competent legal authority, and binds the Government.

One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right, where a settlement is in favor of a third party, than where it is in favor of the United States. When a thing is decided and done by the head of a Department, acting within the scope of his law-
437 ful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony—(Mr. Crittenden's opinion of December 28, 1858, MS.; see also Bank of Metropolis vs. The United States, XV Peters, p. 400; Ex-parte Randolph, II Brocken, p. 470.)

If the acts of Mr. Stuart and yourself, in this respect, had undertaken (as they do not) to dispose of any contending right of third parties, the latter would have had their remedy at law. But what you have done is final as respects the United States.

But have you erred in continuing to follow the line of action which predecessor has prescribed, and which the Commissioner of Public Lands assumed as settled, in presenting to you for approval lists made out on the premises of the subsisting decision of Mr. Stuart? And if you erred, inadvertently, in thus approving selections made by the State above the Rac'oon Fork, shall you now stop and change the rule of action which Mr. Stuart had prescribed to the Commissioner? The answer to these questions is not included in the preceding conclusion. It is one thing to undo an act done, and quite another to cease to persevere in a previous line of action as to acts of a continuous nature.

It might, with much plausibility, be argued that, while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so what Mr. Stuart did, though final as to lands actually approved, was but a precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination, as respects any other lands in the same right claimed by the State; and that, in executing the same law, you are to execute it according to your own understanding of its force and effect.

That may be so, and yet the contingeney is not exactly of the appli-

cation of a precedent to a new case. For the grant to Iowa is one thing, although it be composed of parts, or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Rac'oon Fork; and he proceeded to execute, and did execute that decision in part. And the true question is of the completion of execution by you of what had been partially executed by Mr. Stuart.

I think it must be a clear case of manifest illegality in the work commenced and half executed by on' Secretary to justify the abandonment of it by his successor. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions of Mr. Walker and Mr. Johnson, and the administrative acquies'ences in those opinions on the part of Mr. Stuart. In my judgment, it is not for the good of the public service, while it is prejudicial, and sometimes grossly unjust to private interests concerned, for the Executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that, upon better reflection at the outset, a different decision would have been rendered. To indulge in such oscillation of action, under the influence of ordinary causes of perturbation, is not seemly on the part of the Government.

In the present case of lands above the Rac'oon Fork claimable by the State within its limits, twenty-six*th* fifty-sixth parts, nearly half, the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that determination of the question proper to be acquiesced in by you a settled fact of administration.

438 But this conclusion is placed by me on the ground only of a decision by Mr. Stuart, proper to be accepted by his successor as constituting final action of the Government.

It has been suggested in argument that inference in favor of the present claim of the State may be deduced from a clause in the recent act making a grant of lands to the State of Iowa to aid in the construction of certain railroads in that State, (May 16, 1856.) The word' are:

"That any and all land heretofore reserved to the United States by any act of Congress, or in any manner by competent authority, for the purpose of aiding in any object of internal improvement *of* for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the *the* routes of railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

This provision is rather doubtfully worded. I suppose it intends to enact that the alternate sections reserved to the United States for the sake of augmented sale-value, in case of any previous grants to the State for State objects, shall continue to be so reserved now, and shall not be taken as part of the lands subject to present grant to the State; and if the title still remains in the United States, the right of way is to be passed upon by the President of the United States.

Such an act of the President would apply still more distinctly to any case of actual continuing reservation to the United States for the uses of the United States.

Concluding, at any rate, that the general object is to protect the rights of the United States in any such case, if it exists, it is urged that such a provision would have been superfluous, had not the Des Moines grant extended above the Rac'oon Fork.

Well, suppose a construction which makes it superfluous; what then? There are very many superfluous provisions in the statutes. Of course no very cogent argument can be derived from that consideration.

Moreover, if it were expressly said in the provision that the Des Moines grant was intended , still it would only operate as enactment ex majori cautela, to guard against interferences in case the present controversy should be determined in favor of the State. But the argument errs in supposing that no other grants of land have been made to the State of Iowa for the purpose of aiding in objects of internal improvements, or for any other purpose whatever. Various other grants of land have, from time to time, been made to the State.—(See exempli gratia, V. Stat. at Large, pp. 453, 455; ibid., pp. 789, 790; VI Stat. at Large, p. 810.)

In a word, Congress, by this provision said, "We have already made several grants of land to Iowa, for one purpose or another, which may or may not have been located, and we do not design by this act to undertake to do what, indeed, we could not do if we would—that is, divert those lands from their lawful destination, for the use of railroads, on account of which the present new grants are made to the State."

On the whole, therefore, it seems to me that this provision does not serve, in any way, to change the premises of the question, or the conclusions founded on these premises. Remains the question, on which of the two upper confluents of the Des Moines, the eastern or
439 western, the land is to be taken. I conceive that point to be absolutely determined by the premises of my conclusion.

Mr. Walker's decision, as we have seen, was, that the grant extends "On both sides of the river from its source to its mouth, but not into lands on the river in the State of Missouri."

Now, the language of the act is explicit, granting to Iowa the alternate sections "in a strip of five miles in width on each side of said river" Des Moines; and the improvement is, in the equally explicit terms of the act, "from its mouth to the Rac'oon Fork." But, while carrying the grant above the Rac'oon Fork to the "source" of the Des Moines, where the improvement does not reach, he lops it off below, along the line of improvement, by excluding "lands on the river in the State of Missouri." The explanation of which is, that, for the last twenty-five miles of its course, the river Des Moines is the dividing line between the States of Missouri and Iowa. Missouri enjoys, directly, all the benefits of the improvement of the navigation of the river, but no lands in Missouri are to be comprehended in the grant, notwithstanding its terms are of lands on each side of the river, for the obvious and sufficient reason that the act contains no provision adequate to enable Iowa, to take, hold, and manage lands in the State of Missouri.

I conceive that the considerations which induced Mr. Walker to diminish, by construction, the scope of selection for twenty five miles on one side of the river below the Rac'oon Fork show that, in extending the grant above to the "source" of the Des Moines, he intended to confine it within the limits of the State of Iowa.

Such was the understanding of the subject which guided the action of Mr. Stuart; the lists which he approved expressly referring to the limit of the north boundary of the State. And that is the utmost point to which, in my judgment, you can lawfully go, in case you acquiesce in, and accept as a rule for yourself, the opinion of Mr. Walker and the action of Mr. Stuart.

They unquestionably had before them the maps of the State, in which the eastern branch of the Des Moines was alone depicted, taking its

cation of a precedent to a new case. For the grant to Iowa is one thing, although it be composed of parts, or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Rac'oon Fork; and he proceeded to execute, and did execute that decision in part. And the true question is of the completion of execution by you of what had been partially executed by Mr. Stuart.

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They unquestionably had before them the maps of the State, in which the eastern branch of the Des Moines was alone depicted, taking its

rise in a lake on the boundary line of Minnesota. If they had any knowledge of any western branch of greater or less length, they treated the eastern branch as the true Des Moines.

I think they must have done so, because they could not have done otherwise. Mr. Walker did not say, and could not have said, that the grant extends into Minnesota. If he had apprehended any such consequence of deciding that the grant extends above the Rac'oon Fork, he could not have made this decision, but must have referred the State, as Mr. Ewing afterwards did, to Congress. That is plainly to be inferred from the consideration that the act of Congress cannot be executed, if it be so construed as to assume that the grant extends into Minnesota. It contains no provisions, in virtue of which one State is to hold public domain within the limits of another State, or inchoate State.

Impressed by the force of this consideration, Mr. Walker excluded from the purview of the grant the land on one side of the river, for the length of twenty-five miles, though plainly comprehended by the letter of the act.

Of course it availed nothing to say that, when the grant was made, the part of Minnesota affected was included in the limits of the State of Iowa, and that therefore the letter of the law extends the grant beyond the northern line of the State; so, also, the letter of the
440 law comprehends lands in Missouri. But the letter of the law in the former case as well as in the latter must yield to the legal objection, that, without apt language of enactment to that express effect, it cannot be inferred from other words of enactment that a grant of lands to one State extends into another State, (including in each phrase inchoat' States.)

Moreover, we are not dealing with the import of the grant on its face, or as construed while Iowa was a Territory and included *in* a part of the present Minnesota.

If we go back to that day we find the grant construed and accepted on both sides as not extending above the Raccoon Fork, and of course not involving any possible question of the upper course of the Des Moines. If we now stood there, at that point of time, my decision in the case would be precisely the reverse of what is now in effect, though precisely the same in form and tenure, that is, to accept as final the previous action of the Executive, (including President Polk's proclamation,) which limited the grant to Raccoon Fork, I should be the more fortified in such a conclusion, because the maxim stare decisis would then have applied to the case without qualification or doubt; and also, because, if the naked question of the construction of the statute were before me, as it would then have been, my judgment would have been satisfied with the construction put upon it in that early stage of the case by the United States, and not objected to by the State.

While at that time the idea of acquiescing in the thing decided would have confined the grant to the Des Moines below the Raccoon Fork, the same idea requires that the grant, though carried by your predecessor above the Raccoon Fork, should yet be confined within the limits of the State of Iowa. That is the decision whose authority is invoked as controlling you, and which if you accept at all, you accept on the final decision of the whole matter.

If you throw up the decision of Mr. Stuart, founded on Mr. Walker's opinion; if you come to the conclusion that that is not to be acquiesced in as final administrative action; if you go behind it, then you come at once, per saltum, to the state of the question as it stood anterior to the 2d of March, 1849. At that point we shall have all the arguments of

Mr. Attorney General Johnson in favor of the finality of the Executive action to counsel acquiescence in the then existing practical construction of the law. If, passing over this consideration, we proceed to reason about the meaning of the law, we do not have the advantage of the elaborate arguments on that point which have since been officially presented by Mr. Johnson, and also by Mr. Attorney General Crittenden; but all those arguments would possibly occur to us, and we might be the more easily brought to the same conclusion with the latter by fresher contemporaneous knowledge of the legislative history of the act of Congress.

In fine, after the most mature reflection, it seems to me that only two tenable alternatives present themselves in the case; one, to stand on the action of Mr. Walker and Mr. Stuart, not as legal doctrine, but as decision; and the other, rejecting all the intermediate vascillation of opinion, to go back to the original action, and stand on that as decision, not as legal doctrine. Either of these conclusions would be perfectly advisable, according to the rules of law; for if it be unlawful to go behind Executive decisions, then the last decision in the case was a violation of law, and should be rejected because of its illegality. I
441 have hesitated much on the question whether that be not the true view of the subject, but for reasons already suggested, have come to the conclusion, on the whole, to advise you to stand on the last decision, which gives to the State the lands along the course of the Des Moines up to the northern boundary of the State. There is a collateral consideration which has weight with me. It is discreditable to the Government that its views of a law and its consequent action, should be shifting about like a weather-vane, as they have done in this case. I wish, if it be possible, to stop that. I think that the alternative lines of duty, either of which you may lawfully pursue, and beyond which there is no other apparently lawful course, indicate the means of producing the desirable result of now concluding the subject, in so far as regards the Executive.

I advise, therefore, that you propose to the State of Iowa and its assigns to acquiesce in and accept the decision of Mr. Stuart as final, and to approve selections accordingly, provided the State or its assigns will themselves agree to acquiesce in and accept that decision as final. If they refuse to treat that decision as final they cannot expect you to do so. They should be bound if you are. If they consent to enter into satisfactory stipulations of contract to that effect, you can with safety award them the residue of the claim, up to the northern boundary of the State.

If they decline this proposition, then it is clear, in my opinion, that you are completely discharged from any obligation to act on the premises of Mr. Walker and Mr. Stuart. Nay, it becomes impossible for you to do so, for the very supposition of this alternative is that the State of Iowa denies the finality of the decision; that is, denies that, so far as regards her, it is a decision, and if not a decision for her, then it is not one for the United States.

In that event you are forcibly thrown back on the first decision of the Government—that from which Mr. Walker departed—and must, in my opinion, absolutely refuse to approve any more selections above the Raccoon Fork; the effect of which would probably be to remit the parties to Congress which alone has full power to cut the gordian knot

in which the subject has been tangled up by reason of the inexplicitness of the original act of Congress, and the uncertainties regarding its meaning, which have embarrassed the action of the successive administrators of the Government.

I am, very respectfully,

C. CUSHING.

Hon. R. McCLELLAND,
Secretary of the Interior.

GENERAL LAND OFFICE, *Nov.* 17, 1856.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

THO'S A. HENDRICKS,
Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR, *June 9th*, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th of March, and enclose therewith several letters and
442 arguments which have been received here since the date of your report.

Having submitted the subject to the Attorney General for his opinion upon the questions involved, I enclose a copy of such opinion furnished me under date of the 29th ult.; and also, a letter under date of the 5th inst., from Hon. Reverdy Johnson, (attorney for the claimants under the grant,) in regard to the conditions upon which the subsequent approvals, up to the limits of the State of Iowa, are recommended by the Attorney General to be made.

In subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney General, as contained in the paragraph near the close of such opinion, begin'ing with the words "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with "you can with safety award to them the residue of the claim up to the northern boundary of the State."

I' will be perceived from the endorsement on Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department, but no further action will be taken until the parties are heard from on this point.

In the certificate of approval hereafter prepared for my signature on any lists submitted, the fact should be stated, that the approval being based upon the prior action of the Department, and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the accepta'ce by the State and its assigns would be considered an acquiescence on their part in this limit, and an abandonment of all claim beyond it, as it is upon this base alone, I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above, as to conform to

that state of facts, but without losing sight of the real ground-work of my assent to the approval.

Respectfully, your obed't servant,

R. McCLELLAND,
Secretary.

To Hon. THO'S A. HENDRICKS,
Commissioner of the General Land Office.

EXHIBIT No. 4.

Contracts of the De' Moine' Navigation and Railroad Company.

Articles of agreement made and entered into this ninth day of June, 1854, by and between the Des Moines Navigation and Railroad Company, (a corporation formed under the laws of the State of Iowa,) party of the first part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River improvement, by and with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioner in the State of Iowa, for and in behalf of said State of Iowa, party of the second part, witnesseth: That whereas the commissioners before named have heretofore entered into an agreement with Henry O'Reilly, bearing date the 17th day of December, eighteen hundred and fifty three, and an additional and explanatory agreement, dated April
443 18th, 1854, for the completion of the Des Moines River improvement; and which said agreements, contracts, and all rights of said Henry O'Rielly, by and with the consent and approval of both parties thereto, have been assigned and transferred to and for the benefit of the Des Moines Navigation and Railroad Company, and in pursuance of a stipulation of the said party of the second part, made simultaneously with said agreements, and to carry the same fully into effect:

The said parties for the purpose of simplifying and more fully explaining the said contracts and agreements, the said Des Moines Navigation and Railroad Company, of the first part, and the said Josiah H. Bonney, commissioner, with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioners, of the second part, hereby enter into the following agreement:

First. The said party of the first part doth hereby covenant and agree to and with the party of the second part, for considerations hereinafter named, to make and finish the Des Moines River improvement from the Mississippi River to Rac'oon Forks, on said Des Moines River. The said improvement to be made according to the plan and specification of the engineer of said improvement heretofore made and determined upon, as to style, character, and quality of work, from the town of St. Francisville, on said river to said Rac'oon Forks except that the said party of the first part may improve the style and character of the work, and enlarge the size of the locks, as hereinafter provided; so far as relates to the said work below the said town of St. Francisville, the same shall be done and completed upon such plan as may be determined upon by the engineer employed on said work in connection with W'm J. McAlpine, late State engineer of the State of New York, as consulting engineer, as the said party of the first part shall select for that purpose; provided that all said work shall be done and completed in a substantial manner, so as to secure the navigation of said river to the fullest extent, and for the longest period each year, practicable; and provided further, that the said party of the first part shall not be required to expend below the said town of

St. Francisville in said improvement, more than the sum of three hundred thousand dollars; and provided also that, during the progress of the work, the said party of the first part, their successors or representatives, by and with the consent of the engineer in charge of the work, may alter or change the style and character of the work or locations of either of the locks, dams, or canals, or all of them, or any part thereof, provided no change shall be made authorizing an inferior kind of work or the use of less valuable materials, or lessening the capacity of said locks, or of any piece of canal necessary for the use of any of said locks, or diminishing in usefulness or value the said general improvement; and in case of any disagreement between the engineer in charge of said work and the party of the first part or their successors, in reference to the proposed sites or locations, or modes of constructing the locks, dams, or otherwise, the matters of difference shall be submitted for arbitration to a consulting engineer, or other person to be agreed upon by both parties to this contract, whose decision upon the points submitted shall be conclusive upon all parties.

Second. The said party of the first part further agrees to and with the party of the second part to complete all said work from the river Mississippi to said Rac'oon Forks, on or before the 1st day of July, 1858; and in like manner undertakes and covenants to complete at least one-fourth part of said work each and every year, commencing on the first day of July, 1854.

Third. The said party of the first part doth further covenant
444 and agree with the said party of the second part, to pay and discharge any and all debts of every kind and desciption, outstanding against the said Des Moines River improvement on the 22d day of December last, within ninety days from the date of this contract, provided that the whole amount of said debts shall not exceed the sum of sixty thousand dollars, and to meet and discharge said liabilities the said Des Moines Navigation and Railroad Company have deposited with and paid over to the said Josiah H. Bonney, commissioner, the sum of fifty-five thousand dollars; and it is hereby agreed that the said party of the first part shall have and is hereby entitled to all the moneys due and owing to the said improvement from the General Government, and all claims and demands against the General Government, and all sums of money due from any other source, as also all sums of money now in the hands of said register, or that were in his hands on the 17th day of December last, or that may have been received by him, or have been in his hands on account of said improvement, at any time since the said 17th day of December, 1853; and the said sums of money in the said register's hand on the said 17th day of December, or that may have been in his hands at any time since, may be applied to the payment of any portion of the above-named debts, or for any debts incurred since the 17th day of December, in prosecuting the said improvement, and shall be, by the said register, accounted for, to the said Des Moines Navigation and Railroad Company.

Fourth. All claims by mill-owners or other persons for damages or rights of way or other necessary privileges, in the prosecution of said work, as well as all other claims for damages, shall be settled for by the said party of the first part, and on such terms as they may deem best; and the title to all such rights of way so procured, shall be taken and vest in the State of Iowa, subject to the right of the party of the first part therein, as in this contract mentioned; and all work now progressing under contracts existing on the said seventeenth day of December last, at the dams and locks at Belfast, Farmington, and Keo-

sauqua, shall progress and be carried on under and according to the terms of the respective contracts then existing in relation thereto, if the said contractors shall so elect, and shall be paid for by the said party of the first part, on the estimates made by the engineer from time to time.

Fifth. The said party of the first part doth hereby further agree and covenant that the salaries of the commissioner and register of improvement, and the salaries of the engineer and such assistants as may be required in the prosecution of said work, shall by them be paid from time to time as the same shall become due and payable; provided that the salaries of the commissioner and register of said improvement, shall not be greater than that now fixed by law, and the salaries of the engineer and assistants shall be such as may be agreed upon by said commissioner, by and with the advice and consent of the party of the first part.

Sixth. The said party of the first part further agrees and covenants that, in all cases where bona-fide settlement was made on any of the said lands belonging to said improvement, which were unsurveyed on the 24th day of January, 1853, the settlers, on said lands so unsurveyed, shall have the right to purchase at any time within one year after said lands are surveyed their said lands under the rules and regulations established by the commissioner and register, at the rate of one dollar and twenty-five cents per acre; but no such settler or claimant shall be entitled so to purchase more than one hundred and sixty acres.

445 Seventh. The said improvement shall be pro'ecuted in such manner as not to unnecessarily impede the navigation of said river during the construction of said work; but in all cases the locks shall be constructed and finished so as to allow the passage of boats and other water crafts before any material obstructions shall be created by the erection of dams.

Eighth. Th. said party of the second part on their part, hereby covenant and agree with the said party of the first part to sell and convey to said party of the first part, in manner and upon the terms hereinafter provided, all the lands donated to the State of Iowa for the improvement of the Des Moines River, by act of Congress of August 8th, 1846, which the said party of the second part had not sold up to the 23d day of December, 1853; for which said lands the said party of the first part covenant and agrees, in manner and form as fixed by this agreement, to pay the sum of thirteen hundred thousand dollars.

Ninth. The said party of the second part hereby transfer and assign to, and hereby invest in, the said party of the first part, any and all stone, timber, and all other materials of every kind and description belonging to the said improvement, now remaining along the line of said work or elsewhere, and hereby give said party of the first part full power and authority to use and control the same as they may deem proper, in connection with said improvement.

Tenth. The said party of the second part further covenants and agrees that the parties of the first part, their successors and assigns, shall, from the date hereof, have full possession and control of all locks and dams now completed, and shall from time to time, as each lock and dam is completed, have the control and possession thereof; and, when the whole work is completed, shall have the entire and exclusive possession and control thereof for forty years from the first day of July, 1858, and shall from this date have the right to control and receive, as herein provided, all tolls and water-rents accruing from said improvement, and to make such contract, or contracts, or agreements, and fix such rates

in relation thereto, as they may deem proper: provided, always, that this grant of said tolls and water rents is made subject to the following express condition:

1st. That the tolls to be taken and received by the said party of the first part shall in no event exceed the rate of tolls allowed and chargeable on the Monongahela improvement, in the State of Pennsylvania, on the 5th day of February, 1851.

2nd. All contracts now outstanding between the commissioner and register, or either of them, with reference to the water-rents, with any individual or individuals, shall be carried out by the said party of the first part; and nothing herein contained shall be so construed as to interfere with said contracts, but the money arising therefrom shall belong to, and become the property of, the said party of the first part, in the same manner as all other water-rents as fixed by this contract.

3rd. All moneys arising from said tolls and water-rents, on the entire work, after deducting the necessary contingent expenses attending the superintendence of the locks and the collection of said rents and tolls, and the repairs of said works during the time fixed for the completion of said works, shall be reported to the register of the Des Moines River improvement semi-annually, and shall be expended by the said parties of the first part in said improvement; but such sums shall not be taken into the estimates upon which lands are to be transferred to the party of the first part, but shall constitute a portion of the one million
446 three hundred thousand dollars to be expended by the party of the first part, and of the aggregate sum expended by the party of the first part in said improvement.

4th. At the expiration of said forty years the said works shall revert to, and become the property of, the State of Iowa, and shall be in ordinary repair for their respective uses.

Eleventh. The said party of the second part hereby covenants and agrees that, whenever the said party of the first part shall have done work to the amount of thirty thousand dollars, according to estimates to be made by the acting engineer, under the scale of prices fixed in this contract, the said party of the second part, or the then proper agent or officer or officers of the State, shall transfer and convey to the said party of the first part, or to the then register of said improvement, or such other person as the party of the first part may direct, an amount in value of the lands belonging to said improvement, valued at one dollar and twenty-five cents per acre, to the amount of said thirty thousand dollars, deducting fifteen per cent.; and so on, in the same manner, on each estimate of *of* thirty thousand dollars, until work shall be done to the amount of thirteen hundred thousand dollars, if so much land shall remain unsold, from and after the said 23d day of December, A. D. 1853, or until said work shall be completed; and upon the expenditure of said thirteen hundred thousand dollars, or the completion of said works, all of said land remaining unconveyed, if any, shall be transferred and conveyed to the said party of the first part, or their assigns, or to such person or persons as they shall direct. And all moneys paid by the party of the first part to the register of the Des Moines River improvement, or to the commissioner thereof, in payment of the liabilities resulting from the former prosecution of the work by the State of Iowa, shall, without requiring any estimate to be made thereof by the engineer, be deemed to be a portion of the sums expended in the said improvement by the said party of the first part. And the said register shall convey to the party of the *of the* first part, or such person or persons as they shall designate, a quantity of land estimated at one dollar

and twenty-five cents per acre, equal to the amount of cash thus paid; and the said sums thus paid shall form a part of the thirteen hundred thousand dollars mentioned in the contracts.

Twelfth. For the purpose of determining the lands which the said party of the first part shall have the right to select on estimates made, as contemplated by the last section, it is agreed that, within a reasonable time after concluding this contract, the said party of the first part shall have all the unsold lands in this contract mentioned divided into three classes, according to value, and thereafter they shall take one-third of such amounts as they may from time to time be entitled to from each class. And for all moneys expended until such classification they shall have the right to take said lands, as they remain unsold, commencing with the lands lowest down on the river, making no distinction in quality or value; and for the purpose of classifying said lands, unless a commissioner is mutually agreed upon, each party may choose or select a commissioner, who shall mutually agree upon such classification; and, in case of a disagreement, the said two commissioners shall select a third, and the decision of a majority shall be conclusive. The expenses of said commission shall be defrayed by the party of the first part, and the records of such classification, duly certified by the said commissioners or a majority of them, shall be filed with the register of the
447 Des Moines improvement for reference by and government of both parties under this contract. The river land office for the sale of lands belonging to the Des Moines improvement having, in accordance with the contract with Henry O'Rielly, heretofore referred to, been closed on the 23d day of December last, the said office shall remain closed for the entry or sale of lands, excepting by the direction of the party of the first part.

Thirteenth. It is understood and agreed between the said parties that, in the conveyance of land as contemplated by this contract, all moneys advanced by said parties of the first part for salaries and pay of officers or agents or servants, for rights of way, damages to mill-owners, and other matters, not covered by actual work done on the improvement, shall he included in making estimates; but the moneys that were in the hands of the register on the 17th day of December last, and the value of the materials on hand, (which shall be used,) shall not be included for estimates.

Fourteenth. And it is also agreed and covenanted between the parties hereto, that the following shall be the prices for the different items of work mentioned, upon which the engineer is to make his estimates, and by which the parties are to be governed in the conveyance of land, and other purposes contemplated by this agreement, adding twenty per centum to the aggregate amount of all estimates, to cover all contingencies, to wit:

Preparing lock foundation, $3,000.
Masonry in lock walls, $5 per perch.
Masonry in side walls, $3 50 per perch.
Hydraulic cement, $3 per barrel.
Lock-gates and all fixtures, $2,500.
Square timber, 14 cents per foot.
Oak plank, $2 25 per hundred feet, board measure.
Crib-filling in dams and abutments, $1 per perch.
Stone protection, rip-rap, $1 15 per perch.
Embankments around locks, 20 cents per yard.
Excavation on canals, when the dirt is wasted, 20 cents per yard

when the dirt is used in embankments, 15 cents per yard for the excavation, and 15 cents per yard for the embankment.

Excavation of rock under water, $2 per perch.

Excavation of rock above water, $1 per perch.

Iron bolts, spikes, and other irons, 8 cents per pound.

Round timber, 11 cents per foot.

Excavations for foundations, 40 cents per yard.

And all other items, not embraced and enumerated above, shall be rated according to the estimate of the engineer in charge; and the engineer or engineers in charge of said works shall, from time to time, as shall be found convenient, be appointed by the joint assent of both parties hereto.

Fifteenth. All the work on said improvement, during the progress thereof, shall be and remain under the general supervision of the board of public works and engineer, except as herein modified; and all work, as far as practicable, shall be so conducted as to perfect the navigation in a continuous line, from the mouth of the river upwards, to Fort Des Moines.

Sixteenth. That, for the purpose of providing more effectually for securing the improvement of Des Moines River to the greatest practicable extent, and at the earliest practicable period, the party of the first part shall have the right to such tolls and water-rents as they can col-
448 lect on the river above Fort Des Moines, for a similar period to that provided for the use of the river below Fort Des Moines under this contract, provided they shall, within eight years, at their own expense, improve the river so as to render it navigable for boats of at least two hundred tons burthen, to the Lizzard Forks, or Fort Dodge, or such other point above Fort Des Moines as they may find it practicable: Provided further, That no higher average of tolls shall be charged on vessels or rafts, or articles transported, than the maximum allowed on the section of the river between the Mississippi River and Fort Des Moines: And provided, also, That, at the end of said period, in this section first-named, the improvement on said upper region of the river, above Fort Des Moines, shall be surrendered to and become the property of the people of the State of Iowa, upon the payment to the party of the first part, or their successors, of such sum as the said improvement may be worth at the time, as determined by appraisers to be mutually agreed upon.

Seventeenth. The same right which is now, or may hereafter be, given by law to this said board of public works to condemn lands in procuring right of way for the location of dams, locks, water-power, and canals, shall be, and is hereby, given to the party of the first part; and in procuring the same, they may, if necessary, use the name of the said board of public works, or that of the State, and the board shall assist therein in accordance with the general spirit of the contract.

Eighteenth. The said party of the first part hereby covenant and agree that the State shall not be liable to them in this contract, but will look alone to the funds belonging to, and arising from, the said improvement for compensation as hereinbefore mentioned; and the said party of the second part does hereby agree that if the indebtedness named in the third section of this contract shall exceed the sum of sixty thousand dollars, the time for the use of said improvement by the said company shall be extended one year beyond the time named in the tenth section of this contract, to wit, the first day of July, in the 1899, (eighteen hundred and ninety-nine.)

Nineteenth. The fifteen per cent. raised in the conveyance of land by

section eleventh of this contract, shall be esteemed and taken as part of the thirteen hundred thousand dollars agreed to be paid by the said party of the first part in this agreement.

In witness whereof the party of the first part, by their president and secretary, have hereunto subscribed their names and placed their corporate seal; and the party of the second part, by the commissioner aforesaid, have also affixed their names and seals the day and year aforesaid.

OFFICIAL SEAL OF THE DE' MOINE' NAVIGATION AND R. R. COMPANY.

ORVILLE CLARK, *President*,
HENRY O'RIELLY,
Secretary of De' Moine' Navigation and R. R. Company.
JOSIAH H. BONNEY, [L. S.]
Commissioner of De' Moine' River Improvement.
URIAH BIGGS. [L. S.]
GEORGE G. WRIGHT. [L. S.]

G.—*Supplementary agreement.*

Whereas by the foregoing agreement, bearing date the 9th day of June instant, the Des Moines Navigation and Railroad Company, of the one part, and the State of Iowa, by Josiah H. Bonney, commis-
449 sioner of the Des Moines River improvement, by and with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioners of the said improvement, of the other part, have contracted and provided for the completion of the said improvement from the mouth of said Des Moines River to the Rac'oon Fork, on the terms and according to the plans and specifications in the said contract provided; and it being deemed desirable to enlarge the said locks and capacity of such canals as may be built in the prosecuting said improvement under said agreement, now therefore, this additional and supplementary agreement witnesseth:

That the said Des Moines Navigation and Railroad Company, of the first part, for and in consideration of the covenants herein contained, do covenant and agree with the State of Iowa, by the commissioner and assistant commissioners hereinbefore mentioned, to build the said locks provided to be built in the said agreement of the ninth of June instant, two hundred feet long, in the same proportion that the present locks and plans provide for their being one hundred and seventy-five feet long; and that they shall be so constructed as to secure four and one-half feet of water on the lower mitre-sill, and to secure a navigation of at least four and a half feet of water; and the canals shall be so constructed as to give at least four and a half feet of water with suitable dimensions for boats or vessels navigating the same, with such depth of water at the locks and in the canals: and in all other respects the said work is to be done under and in pursuance of the terms and conditions of the said contract of the ninth of June instant.

And the said party of the second part, the said State of Iowa, by the commissioner and assistant commissioners aforesaid, do covenant and agree with the party of the first part, that the said party of the first part shall have and enjoy the said , its use, rights, and privileges, its tolls, water rents, and franchise, for the term of sixty years from the first day of July, 1858, fully and absolutely, as is provided in said agreement of the ninth of June instant, for forty years; and on the same terms therein provided, saving and excepting that, from and after the first day of July, (1913,) one thousand nine hundred and thirteen,

until the first day of July, (1918,) one thousand nine hundred and eighteen, the said party of the first part shall pay into the treasury of the State of Iowa seven per centum of the nett amount of the tolls and water-rents received on the said improvement, from the said Rac'oon Fork, to the mouth of the said Des Moines River, after deducting all expenses of repairs, superintendence, and other proper charges.

In witness whereof the said party of the first part, by their president and secretary, have hereunto subscribed their names and affixed their corporate seal; and the party of the second part, by the commissioners aforesaid, have subscribed their names and affixed their seals, this ninth day of June, 1854, (one thousand eight hundred and fifty-four.)

OFFICAL SEAL OF THE DE' MOINES NAVIGATION AND R. R. COMPANY.

ORVILLE CLARK, *President.*
HENRY O'REILLY,
Secretary of De' Moine' Navigation and Railroad Company.
JOSIAH H. BONNEY, [L. S.]
Commissioner, &c.
URIAH BIGGS. [L. S.]
GEORGE G. WRIGHT. [L. S.]

450 *H.—Supplementary agreement.*

I' consequence of a misapprehension which has mutually existed by and between the commissioner and assistant commissioners of the Des Moines improvement, of the one part, and the Des Moines Navigation and Railroad Company, of the other part, in reference to the amount of unsold lands belonging to said improvement situate below Fort Dodge or the Lizard Forks; and the agreement between the State of Iowa (by said commissioner and assistant commissioners,) and said Des Moines Navigation and Railroad Company, bearing date the ninth of June, 1854, for the improvement of the Des Moines River, were made and executed under such misapprehension of the amount of said lands:

Now, therefore, this agreement witnesseth: That, in consideration as aforesaid, and of one dollar to the party of the first part paid, the receipt whereof is hereby acknowledged, and to secure the objects of said agreement of the ninth of June, 1854, the State of Iowa, by the said commissioner, Josiah H. Bonney, and the assistant commissioners, in behalf of the State of Iowa, party of the first part, does hereby expressly covenant and agree to and with the said Des Moines Navigation and Railroad Company, party of the second part, that, in case the said party of the second part shall do and make the said work of the said improvement as contemplated and provided by the supplemental contract or agreement of the ninth of June. 1854, that the said party of the first part shall have the full and absolute right to and use of the said work, the lands connected therewith as road-way, and appu'tenances, the franchise, water-rents, tolls, and appurtenances to all of said work, absolutely, for the full end and term of seventy-five years from the first day of July, 1858, as full as is provided in the said first or principal agreement of the ninth day of June, 1854, for the term of forty years; and it is also agreed that the said party of the second part shall have the right to build, in connection with any dams they may make, any bridge or bridges across and over the said Des Moines River, and, with proper legal authority or consent, demand and receive tolls for crossing the same.

In witness whereof the said State of Iowa, by it commissioners aforesaid, and the said Des Moines Navigation and Railroad Company, by

their president and secretary, have hereto subscribed their names and affixed the corporate seal of said company, this 29th day of June, 1854.

SEAL OF THE DE' MOINE' NAVIGATION AND R. R. COMPANY.

ORVILLE CLARK,
President.
HENRY O'RIELLY,
Secretary.
JOSIAH H. BONNEY, [L. S.]
Commissioner Des Moines River Improvement.
URIAH BIGGS, [L. S.]
Assistant Commissioner.

Des Moines Nav. and Railroad Co.—Supplemental contracts of Sept. 27, and Dec. 5, 1855.

Whereas, it is deemed advisable by the parties to the agreement of the 27th of September, to wit: The Des Moine' Navigation and Railroad Company, and the State of Iowa, by their commissioner and assistant commissioners, to lay the masonry of the locks of the Des Moines River improvement with quick-lime mortar, at such seasons of the year
451 as the weather and other circumstances will allow, and also to define more particularly the style, character, and quality of the masonry of said locks:

Now, therefore, it is mutually agreed that the said Des Moines Navigation and Railroad Company, parties of the first part, shall be, and are hereby, authorized to lay up the whole or any portion of the locks of the said improvement, with quick-lime mortar, or grout, in the interior of the walls, provided the face-stone of the same shall be pointed with hydraulic cement; and in such case the timber and plank facing of the chambers of the lock provided to be used by the said contract of the 27th of September, 1855, may be omitted.

The masonry of the locks shall be composed of sound, well-shaped, and durable stone, laid up with quick-lime mortar, and pointed with hydraulic cement, in a workmanlike manner, so as to produce firm, compact, and durable work. The walls shall be formed of stone, which shall have their several dimensions not less than the following, to wit: Four feet area of bed, six inches thick, two and two-thirds feet length, and one and a half feet width. They shall be properly quarried with smooth, level, and parallel beds, and when the natural beds of the stone do not afford such surfaces, they shall be dressed or pointed off. The stone forming the facing of the chambers shall be scrabbled to close compact joints on the face, and shall be bevelled up to regular lines; the walls shall be laid up with , as before mentioned, and the intermediate spaces shall be filled up with smaller stones and spalls, so as to make close, compact, strong, and durable work. The main stones shall be laid in the form of headers and stretchers, so as to tie and bind the work in the best manner. The tops of the whole shall be coped with cut-stone not less than nine inches thick and four feet long, and of sufficient width to allow not less than two stones to cover the wall, so arranged that they shall break joints not less than one foot past each other. The coping stones shall be tied together by iron clamps, let into the stone and well bedded.

And the State of Iowa, by their commissioner and assistant commissioners, do hereby agree that the price for masonry upon which the engineer is to make his estimates to determine the amount of land which is to be conveyed, and for other purposes, as provided in the 14th section of the contract made on the 9th day of June, 1854, shall

be at the rate of four dollars and seventy-five cents per *per* perch for the masonry laid in quick-lime and mortar, instead of five dollars as provided in said contract, adding to the said price the twenty per centum to cover contingencies therein, as provided in said 14th section.

In witness whereof the party of the first part, by their president and secretary, have unto subscribed their names and placed the corporate seal of the Des Moines Navigation and Railroad Company; and the party of the second part, by their commissioners aforesaid, have also affixed their names and seals, this fifth day of December, 1855.

The Des Moines Navigation and Railroad Company,
By W. C. JOHNSON, *President.*
A. HUNT, *Secretary.*
W'M McKAY, *Commissioner.*
URIAH BIGGS, *Assistant Com.*

Whereas, from a personal examination by the commissioners and engineers, of the present condition and progress of the works on the Des Moines River improvement, now in the hands of the
452 sub-contractors, with a view to hasten the completion thereof, and to bring into use at the earliest moment practicable, the entire length of the said improvement, from the Mississippi River to Fort Des Moines; and whereas, by the failure of the contractors for manufacturing hydraulic cement for the works of the said improvement, it is, at this late season of the year, found to be impracticable to procure a suitable quality of such cement, for the masonry of the locks, in consequence of which the works of said improvement will be unavoidably delayed in their completion:

Now, therefore, it is mutually agreed by and between the Des Moines Navigation and Railroad Company, of the first part, and the State of Iowa, by W'm McKay, commissioner, and Uriah Biggs and George G. Wright, assistant commissioners, for and in behalf of said State of Iowa, of the second part, that the said party of *of* the first part shall be, and are hereby, authorized to construct the locks of the said improvement in the following manner, to wit:

The masonry, or so much thereof as may be deemed advisable by the engineer, shall be laid up without the use of hydraulic cement, but there shall be built in the said walls wells, extending from the bottom to the top thereof, in such manner that, at any time after the completion of the same, the said walls may be grouted in a thorough and water-tight manner. And for the purpose of rendering the said walls water-tight before they shall be grouted through the wells above described, the said walls shall be faced with timber and plank of suitable quality, and properly secured to the masonry.

And the said party of the first part do hereby, for themselves and successors, engage and obligate, that they, from time to time, and as often as may be necessary, will renew all of the said works which may be of a temporary character, and ultimately reconstruct the same, and deliver the same to the State upon the plans, and in the manner and style defined by the present existing contract.

And the said party of the first part further agrees to proceed with the whole work from Mississippi River to Fort Des Moines, and complete the same as rapidly as the same can constructed, so that the whole work shall be brought into use for its entire length at the earliest day practicable, and by the first day of July, 1858.

And the said party of the second part do hereby agree that the 14th

section of the existing contract of the 9th day of June, 1854, shall be, and is hereby, modified in the following manner, to wit:

The price for masonry in lock walls, upon which the engineer is to make his estimates to determine the amount of land to be conveyed, and for other purposes, as provided in said contract, shall be at the rate of three dollars and seventy cents per perch, instead of five dollars per perch, as before provided; and for the timber used in the facing of the said walls of masonry, at the rate of twenty-five cents per cubic foot; and for the plank used for said facing, thirty dollars per thousand feet, board measure, for oak and black walnut, and fifty dollars for white pine; adding to the said prices the twenty per centum to cover the contingencies thereon, as provided in the said 14th section.

And it is further mutually agreed that anything in the contract of the 9th of June, 1854, or any other contracts heretofore made between the parties hereto contrary to, or inconsistent with, this agreement is hereby accordingly modified so as to agree herewith, and to be controlled hereby.

In witness whereof the party of the first part, by their president and secretary, have hereunto subscribed their names and placed their
453 corporate seal; and the party of the second part, by the commissioners aforesaid, have affixed their names and seals, this 27th day of September, 1855, at the city of Fort Des Moines.

(Signed) W'M C. JOHNSON,
President.
W'M McKAY,
URIAH BIGGS,
Com. D. R. I.

Part of the journal of the general assembly of Iowa of 1857.—*Report of the joint committee on the Des Moines River improvement.*

The committee to whom was referred so much of the governor's message as relates to the Des Moine' River improvement, and the joint resolution of the general assembly, directing the course of investigations to be pursued by your committee, have given the subject all the attention consistent with the discharge of other duties incumbant upon them, and ask leave to report:

That a full and fair investigation of the matter referred to them has required much labor and time in the examination of laws, witnesses, papers, and documents. In the entire investigation, the committee used all means in their power to get such information as would enable them to arrive at a just and correct conclusion as to the facts connected with the matter; and your committee would here remark that it has been the desire of every member to protect the just and legal rights of the State, and at the same time render to all others not only legal, but equitable justice. And as there are, or have been, as your committee are not unmindful, rumors and reports in circulation that at least a portion of the committee were unfriendly to the further prosecution of the work on the De' Moine' River improvement, and in favor of diverting said appropriation, if possible, to the construction of railroad or other improvements, we feel bound here to state such rumors or reports are entirely groundless, inasmuch as there has been, during the investigation, but one wish expressed by every member of the committee, which was to pursue such a course as would secure the greatest possible advantage to the De' Moine' River improvement, and that any attempt to divert any portion of said grant, or the proceeds thereof, from the

purpose for which it was originally granted, would be not only illegal, but impolitic and unjust.

By a joint resolution instructing us in regard to the investigation are involved many legal questions, which have been considered fully by the legal members of the committee, and with the approbation of the other members of the same, make the following reply to the first resolutions:

In compliance with the first instruction, your committee are of the opinion that no legal contract was ever entered into by the State of Iowa with the De' Moine' Navigation and Railroad Company. The authority to make contracts on behalf of the State is conferred by law (Session Laws of 1853, page 64) upon the commissioner and register; but any contract entered into by them only being valid when signed by the commissioner and countersigned by the register, and approved by the governor. The authority vested in the register was subsequently vested in two assistant commissioners, (Session Laws of 1853, page 163,) but the approval of the contract by the governor is not dispensed with. As the misunderstanding of the parties, if any exists, with regard to the necessity of the approval of the governor, has grown out of the provisions of this act, your committee beg leave to call particu-
454 lar attention to the language of the act, believing that a careful examination will show conclusively that your committee are correct in asserting that the approval is essential to the validity of the contract.

After creating the office of assistant commissioner, the act defining their duties, says: "The duties of said assistant shall not extend any farther than to aid said commission in negotiating such contracts and agreements as are contemplated in this act, or any other act passed at the present session of the general assembly, and anything in this act, or any act on the subject of the De' Moine' River improvement, which vest authority and power in the commissioner and register to make contracts and agreements, is herein so modified as to vest said power and authority in the said commissioner and the two assistants."

The governor is not invested by the first act above referred to with any of the duties and powers conferred by the act last above referred to upon the assistant commissioners, and the first-mentioned act is not repealed by the last, but only so modified as to vest in the assistant the authority before conferred upon the register, clearly leaving the authority to and necessity for approval in the governor.

The fact as testified to by Mr. Bonney, that the governor did not deem his approval necessary to the validity of the contract, does not effect the requirements of the law, and cannot possibly be construed into a compliance with its provisions.

Any recognition of the contracts and subsequent action under them by the officers of the State cannot cure this defect, as the State is only bound by the acts of its officers when discharging the duties imposed upon them by law, and your committee know of no law authorizing the commissioner or other officer to recognize and act under illegal contracts, and thereby render them valid. The only effect that such recognition could possibly have would, in the opinon of your committee, be to render the State liable for the value of the improvement actually made.

All the subsequent modifications, explanation, or additions to the original contract, either by supplementary contracts or otherwise, are subject to the same objection, and are, therefore, in the opinion of your committee, invalid.

In compliance with the 9th instruction, your committee submit:

On the 8th day of August, 1846, (see U. S. Statutes at Large, p. 77,) Congress passed an act declaring that "there be, and is hereby, granted to Territory of Iowa, for the purpose of aiding such Territory to improve the navigation of the Des Moines River, from its mouth to the Raccoon Fork, (so called,) one equal moiety, in alternate sections," &c.

This shows how the improvement was to made, to wit, "from the mouth to the Raccoon Fork." Section 2 of the same act declares "that the lands hereby granted shall not be conveyed or disposed of by said Territory, or any State to formed out of the same, except as said improvements shall progress."

Here is a positive prohibition against making title for the lands except as the work shall progress from the mouth up the river.

The act provides that the governor shall certify the progress of the work from time to time to the President of the U. S., and that the Territory or State may sell the lands as the work progresses, and as the lands shall be thus certified.

The grant is absolute, in terms presenti, but is coupled with a
455 prohibition against any sale or conveyance, except as the work progresses; hence it is not in the power of the legislature to dispose of or convey the land in any other manner, nor could the State authorize any agent or commissioner to do an act which the State itself could not do. It will be seen that the improvement must precede the conveyance of the title; that the contract to make improvement precedes both. It cannot, therefore, be claimed that the contract for the improvement is, per se, a conveyance.

Certificates have been issued to the company showing that they were entitled to have about 205,000 acres of land conveyed to them, but, in the opinion of your commitee, these certtficates do not convey the legal title to said lands; consequently no land has been legally conveyed to said company. The law (Session Laws of 1850, page 137,) requires the governor and register to execute the deeds for the land; no title passes except by deed from them, and the certificate of the commissioner and register, if regularly issued upon a legal contract, could convey nothing but an equitable claim upon the land, and as the certificates in question were issued in pursuance of an invalid contract, they can, by no possibility, convey more than an equitable claim for the actual value of the improvements made by said company.

In compliance with the 14th instruction, your committee submit: That, in the opinion of your committee, the company have not complied with the requirements of section 685 of the code. That section is evidently intended as a protection to those dealing with corporations, and requires that the statement contemplated therein should show whether each individual stockholder has paid the full amount of stock subscribed for or owned by him, in order that the individual liabilities of each stockholder for the debts of the company may be ascertained. The testimony shows that neither the books kept at Ottumwa nor the statement posted up at that office shows the amount paid or now due on each individual's stock, or that said statement shows the current indebtedness or liability of the company, but the amount only which is due on bonds issued by the company.

In compliance with instruction 17, the committee submit:

That said company has not kept within the State, books or copies thereof, showing the facts enumerated in section 692 of the code. That such books, if any exist, are kept in New York City, in the State of New York, and are consequently inaccessible, without great trouble and expe'se, to the citizen of Iowa.

In compliance with the 19th instruction, your committee submit:

That no books have been kept by the company in the State of Iowa showing the names of the original stockholders, their respective interests, the amount which has been paid in on their respective shares, and all transfers thereof, nor the transfer of stock, the time of transfer, or by whom or to whom transferred. Nor has any statement of these facts been kept posted at the principal office, or any other place in this State.

If any such books exist, they are kept in the city of New York. Mr. Johnson, the president of the company, testified before the committee that he had no means of furnishing these facts to the committee.

The committee have had none of the books of the company before them, but it has been developed by the testimony that over one million of dollars of full-paid stock has been issued by the company, upon which has been received but $167,000, leaving a deficit of $823,000, for which certificates of full-paid stock have been issued, for which not a farthing has been realized by the company. The amount may be much greater than this, the testimony of the witnesses being from recollection, and altogether uncertain.

456

This stock is now nearly or quite all in the hands of innocent bona-fide purchasers, for valuable consideration, who purchased it, believing that its full par value had been paid therefor into the treasury of the company. It will thus be seen that a gigantic fraud has been perpetrated upon the stockholders of the company, and that the company have not only forfeited their charter, but that every officer or stockholder, who has participated in, or been cognizant of, said fraud, has rendered his individual property liable to any party injured. (See sections 686 and 690 of the Code of Iowa.)

It is due to the gentleman now acting as president of the company, to state that the testimony before the committee shows that the certificates of this stock had all issued before he had any connection with the company.

By the terms of what is claimed to be the original contract, the whole improvement was to be completed by the first of July, 1858, and one-quarter of the work done annually. Now, according to the evidence before the committee, it appears there was expended by the company, up to the first of December, 1856, a period of nearly two and a half years, in actual construction, $185,957 44, and in engineering and incidental expenses, $104,180 74.

While, by the terms of the original contract, $300,000 were expected to be expended from the mouth of the river to St. Francisville; and from the testimony of Guy Wells, esq., principal assistant engineer on the work, who is more familiar with the work than any other person, it would require $230,000 to complete the work from St. Francisville to Keosauqua, including the work at both places, making an expenditure of more than $500,000 necessary to complete the improvement to Keosauqua, and requiring, according to the testimony of Wells, an additional expenditure of $470,000 more to complete the improvement from Keosauqua to Ottumwa.

This shows that to complete the entire work from the mouth of the river to Ottumwa, would require nearly $1,000,000.

This distance would be about one-half of the whole line of improvement. It will, therefore, be readily perceived that one-quarter part of the work was not done as contemplated by the original contract; and, in fact, very little of the work was actually done during the first year of said contract.

For the information of the general assembly, and in compliance with their instructions, we herewith append a statement of the amount of work actually done at each point on the improvement. At Croton, where a lock had been built by the State, a dam was put in and completed by the company; this is the only piece of work on the line completed by them.

At St. Francisville	$6,115	04
" Belfast	15,923	63
" Croton	19,114	08
" Plymouth	37,053	29
" Keosauqua	36,491	30
" Pittsburg	5,000	74
" Litchfield	9,409	76
" Orville	10,258	66
" Iowaville	15,927	74
457 " Alpine	6,277	44
" White Breast	3,076	70
Value of hydraulic cement delivered for use	2,305	00
For snag-boats and operating the same	15,932	37
For repairs	3,082	37

In justice to the company it is but right to state that the engineers were, a large portion of the first year, engaged in making the surveys, and by Mr. Wells it was stated that he understood considerable time was consumed in making the necessary financial arrangements for the prosecution of the work, and that during the last summer and autumn there was much delay necessarily caused by sickness among the hands and contractors.

But your committee can find no reasonable excuse for the extraordinary sluggishness with which the work has been prosecuted, compatible with an honest purpose of prosecuting the work to completion, for the sole consideration of receiving in payment therefor the lands granted by Congress, and the use and rents of improvement and water-power.

It is true that in the original contract, undertaken to be made in pursuance of the provisions of the law, there seemed to be, at any rate, an inconsistency in the contract.

The company agree to pay for all the lands embraced in said grant and remaining unsold in December, 1853, the sum of $1,300,000; but in a subsequent section of the same contract, it is stipulated that this land is to be conveyed to said company, in the manner following, to wit:

When the work *in* done to the amount of $30,000, there shall be conveyed 24,000 acres of land without any understanding or stipulation, relieving the State in case the land should happen to be a less quantity than sufficient to amount to the $1,300,000 at 1 25 per acre; nor is there anything binding the company to secure the State from any further claim, if she shall fail to supply land to that amount, and yet prosecute the work to completion.

Now, according to the statement of the commissioner, T. C. Lockwood, on the 9th of June, 1856, there was remaining unsold of lands actually assigned by the Commissioner of the General Land Office to this improvement, only 266,107.13 acres; this land, at $1 25 per acre, would amount to $322,633 39.

Although there was, and still is, an unsettled claim which the State asserts to the lands extending further up the river, of these lands, the commissioner and register, at or before May last, certified, as they term it, to the D. N. & R. R. Co. 204,574.35 acres, leaving 61,537.78 acres;

but, in the opinion of your committee, as before expressed, the legal title to the lands above certified to has not passed from the State.

Now, if the D. N. & R. R. Co. had a bona-fide capital actually on hand of nearly $1,000,000 paid in for the prosecution of the work, as they ought to have according to the amount of stock issued, and had hitherto prosecuted the work with that vigor and energy which its importance demands, and which the people of the State had a right to expect, the condition of things would be very different; but, as the work has been done, in the opinion of your committee, under a contract without any validity in law, and, if said contract had been valid, in no manner according to the spirit and meaning thereof, your committee are of opinion that said company are justly and equitably entitled to a fair compensation for the work done by them, but are not entitled, unless the
458 State so elect, to payment in lands at $1 25 per acre, which are worth six or seven dollars per acre. Nor do your committee see any guarantee the State would have for any further prosecution of the work if these valuable lands are certified to them by the commissioner and register to the amount of more than 200,000 acres, and worth, as your committee believe, at this time, more than $1,200,000, were conveyed to them; for it will be borne in mind that corporations are without souls, and the parties representing them are constantly changing; and your committee, after strict inquiry, have been unable to satisfy themselves that the D. N. & R. R. Co. have any available responsibility to any considerable amount which could be reached by any legal process issued under the laws of this State. Here, however, your committee would remark that they have entire confidence in the honor of the president, Mr. Johnson; but there is no assurance that he will be any longer connected with the company as the president, but have reasons to believe that he will not.

It is true that the recently-appointed commissioner, Edwin Manning, has recently entered into a modified contract with said company, which appears, upon the face of it, to be advantageous to the State; and if the State were bound by the contract of June 9th, 1854, would undoubtedly be advantageous, yet we cannot see or feel that the reduction of what would at least be doubtful expenditure, and an agreement to require no more land until one-fourth of the improvement is done, is a sufficient guarantee for the efficient prosecution of the work; inasmuch as there has heretofore been a series of modifications without any increased vigor or energy in the prosecution of the work; particularly if it is expected, as we are informed, that the land heretofore certified to is to be conveyed in fee-simple to said company.

Your committee are also asked to enquire whether the various modification of the contract did not materially lessen the cost and value of the work on the improvement. To which we have to reply that, if carried on, your committee believe that it would lessen, in some respect, the value of the work; but, as testified before the committee, no work has been done under such modification. And in reply to another inquiry as to the character and value of the work, your committee find, from evidence before them, that the work done is of a good substantial quality, and, if completed as commenced, would be of incalcu'able value to the State.

There have been some bonds taken, in the name of the president of the company, for the conveyance of lands where dams, and locks, &c., are to be located, but no conveyance actually made. These lands, however, in the modified agreement with Mr. Manning, it is agreed, shall be conveyed to the State.

But there has been less trouble on the part of your committee in coming to the conclusion they have in regard to the illegality of the original contract and its supplements, and the failure on the part of the company to keep and perform the same in good faith, than there is in deciding upon a course to be recom'ended for the action of the general assembly and the future prosecution of the work on said improvement.

After much reflection and mature deliberation, however, your committee have determined to recom'end the passage of a law authorizing, by the appointment by the governor, an additional commissioner, who, with the one now authorized by law, shall be fully authorized to make, if practicable, a just, equitable, and advantageous arrangement with the D. N. & R. R. Co. upon such terms and under such restrictions as will insure the speedy and vigorous prosecution of the work on said improve-
459 ment to a useful result. And in case of a failure of such negotiation, then to settle and adjust upon fair and equitable terms any and all just claims said company may have for money expended on said improvement.

And for the payment of said adjusted claims and the further prosecution of the work on the improvement, your committee recommend that said commissioner be authorized to sell lands or pledge the whole or any portion of the lands still belonging to said grant, as security for means to accomplish these objects; such contracts or agreements to require for their validity the approval of the governor.

Your committee would further report that they are unable to see any good reason for further continuing the officer of register of the Des Moines River improvement, but would recommend that all the paper' and books pertaining to that office should be transferred to the office of the register of State lands, and the office of register abolished. And to prevent any misunderstanding, your committee further recommend that the office of assistant commissioner be abolished by law.

And in conclusion, your committee would recommend that the commissioners, or some other person or persons, be authorized and empowered to adjust, in such manner as will be most advantageous to the State, and finally settle the claim for lands now in dispute and unsettled.

All of which is respectfully submitted.

(Signed)

D. T. BRIGHAM.
W. F. COOLBAUGH.
W'M G. THOMPSON.
J. W. JENKINS.
J. J. MATTHEWS.
D. EDMUNDSON.
B. F. ROBERTS.
JOHN H. FRY.
MILES JORDON.
DAVID DOUD, JR.
JOHN E. KURTZ.
JAMES GALBRAITH.

Report of Edwin Manning, commissioner of the Des Moines River improvement.

To the honorable the senate and house of representatives of the State of Iowa, in general assembly met.

GENTLEMEN: My recent appointment to fill the vacancy occasioned by the resignation of W'm McKay, as commissioner of the Des Moines

River improvement, must be my apology for not earlier submitting to you my report of its affairs, in obedience with the law.

The law requires, and is satisfied with a simple statement and report of its present condition, at my hands. But at this progress and juncture of its affairs, I regard the public good requires and calls for a more general examination, as well of the past as the present condition and standing of this important work.

In view of the fact, however, that this subject is now in the hands of a joint committee of your honorable bodies for such investigation, I will only submit a brief narrative of its condition and progress, with a view to elucidate, if possible, the main questions that are involved in its progress and prospective completion.

It is sufficiently known and understood that this improvement is based upon and p'osecuted by means of a grant of lands by the
460 General Government, by act of Congress, August 8th, 1846, for the special purpose of improving the navigation of the Des Moines River.

The State of Iowa, through its board of public works, prosecuted this improvement about six years, up to June 9th, 1854, and during this period expended about four hundred and seventy-five thousand dollars. The result and progress of the work attained at that time was as follows:

A complete engineering survey of the line of improvement was made.

A ship canal commenced, and a large amount work performed for a distance of 10 miles.

Three stone-masonry locks (of a capacity to chamber boats 160 feet long and 44 feet beam,) and two dams completed, together with large amounts of material procured a' different points on the line.

On the 9th of June, A. D. 1854, the commissioner and assistant commissioners of the improvement entered into a contract with the Des Moines Navigation and Railroad Company, whereby said company undertake and agree to finish the line of improvement from the mouth of the river to F't Des Moines by the first of July, 1858, and for which the State covenants to give all the remaining unsold lands in the grant, under certain restrictions, viz:

As fast as $30,000 is expended and applied to the improvement they are to receive lands therefor at $1 25 per acre, less 15 cent., and so on until the whole line is completed and the sum of $1,300,000 expended thereon.

Since the making of said contract the work has progressed under the management and control of said company up to the present time.

Immediately following my appointment, I proceeded to examine the present condition of the work on the line of the improvement, as well as the accounts and affairs generally, appertaining to the contract between the company and the State, preparatory to my report.

The result of my examinations, confirmed my previously-entertained opinions, in part, at least, that an erroneous policy had been adopted by the company, in its manner of prosecuting this important work, but at the same time it must be admitted that their policy and plans have been approbated, at least, if not advised by my predecessors on the part of the State.

It must, therefore, at once be seen that the affairs present many serious difficulties, which, to comprehend and fully understand, requires a review of all that has transpired between the company and the State, under their contract of June 9, 1854.

That the company have failed to perform their contract with the State

is not denied; but, in justification, they claim that the State has not perfected the grant with the General Government, and on that account it is urged that the State in equally in default.

I shall take the position that the rights of the State must be maintained in this contract to the utmost extent, and that it is an incumbant duty upon her agents to protect the interests of the State in such manner as is best calculated to carry out the arrangement with said company according to its true intent and meaning.

At the same time it must be admitted that the rights and relations in this contract are equally sacred and important to the company. The good faith of the State is pledged that such rights shall be respected, and that no undue advantage shall be taken whereby its rights are infringed or impaired without good and valid reasons shown therefor.

In order to lay before you all that I deem important, I shall first give you a synopsis or schedule of the construction at different points upon the line of improvement, commencing at the mouth of the river.

461 The plan of improving the present channel of the river from the Mississippi to St. Francisville is without locks, a distance of 12 miles. It is proposed by the company to remove the snags and trees from the bed of the river, and deepen the channel in shoal places by dredging and confining the water by means of wing-dams in its lowest stages to a narrower channel. The company have procured for prosecuting this plan of improvement a dredge-machine and snag-boat, together with scows, tackle, rope, and fixtures to operate the same.

The total expenditure, including the expense of operating the same to this time, is reported by the chief engineer at $15,932 37.

This work may be said to have just commenced.

ST. FRANCISVILLE.—*First dam.*—At this point the lock is partially excavated, the coffer-dam is in, and the lower mitre-sills are laid. The work is well started, and a large amount of materials are on the bank in readiness for early commencement in the spring, the extent and value of which you will see in the general list.

BELLFAST.—*Second dam.*—At this point the lock-walls are carried up full width and length about eight feet high, and a large amount of rock in readiness to finish the lock early in the spring. The sub-contractors are energetic and practical workmen. If the season is favorable, they will probably finish the job the ensuing year.

CROTON.—*Third lock.*—At this point the lock was built by the State. The company have constructed a new dam, say 12 feet high, at a cost of about $20,000.

The lock walls will have to be raised to correspond with the dam and ensure good navigation in high water, say from 3 to 4 feet.

The water-power here is valuable for its abundant supply at all seasons.

PLYMOUTH.—*Fourth lock.*—At this point the lock-walls are carried up full height and width about 10 to 12 feet high, and rock matarials ready to finish early in the spring. There is also a large supply of materials procured for the dam. The work is in favorable progress, and the subcontractor is an energetic and practical man, and urges the work with commendable zeal. The construction and materials at this point will exceed $37,000.

BONAPART.—*Fifth Lock.*—At this point the lock and dam was constructed by the State nearly eight years ago, and is in good condition.

Messrs. Weeks & Son are the contractors, and still have control of the power at this point. If there is any doubt of the practicability of this important navigation, I would refer to this point as demonstrating the fact, and affording reasons to quiet all fears.

BENTONSPORT.—*Sixth lock.*—At this point the lock and dam was constructed by the State. The present company have expended between $1,500 and $2,000 in repairs, and it probably require a similar outlay to complete it.

The lock is in working order.

KEOSAUQUA.—*Seventh lock.*—At this point the lock and dam was partially built by the State. Bonney & Whittlesey were the contractors, and were progressing with the work up to the time of making the contract with the present company. The construction and materials estimated and allowed to Messrs B. & W., and paid for by the State and the company, as shown by the books, amount to the sum of
462 $46,775 13. At this stage of the work Messrs. W. & B. transferred their contract to the present company. A few weeks subsequently it was relet to Bonney, Russel & Co., who still have the control upon this work. Immediately following the transfer of the contract of B. & W. to the company, one of the lock-walls partially built, was condemned by the chief engineer, and removed.

This wall is now being reconstructed, and the character of the work is believed to be good.

The delay and procrastination of the work at this point has been, and is yet, a grievous source of complaint, and is not confined to its vicinity; but extends throughout the entire valley. It must be remembered that at this point the lock and dam is located at the head of the largest rapids in the river. The unfinished condition of the work, therefore, has caused great additional obstruction to navigation. The damage sustained and the dangers encountered at this point by the commercial and agriculture communities of the valley hitherto, growing out of this grievous obstruction, is so great that a reasonable computation upon the freight and commerce made subject to extra charges, would appear almost fabulous.

It is also true that the heaviest of this burthen falls upon the upper portion of the valley, from the fact that boats are so long unavoidably detained in lightening and getting over the rapids that they not unfrequently fail of destination, and, of necessity, store their cargoes. This works a peculiar hardship upon the shipper, and causes not only delays but serious losses.

Now, to undertake to determine the source of all these evils would, in the opinion of your commissioner, involve a waste of time to little benefit. But it is here proper to remark, that this case is now fully understood by the company, and I have the best of assurance from the president that if the present sub-contractors do not progress with the work satisfactorily to your commissioner, that, upon reasonable notice, the work shall be relet to a reliable and vigorous party, to ensure its early completion.

In order to obviate the building of a dam and lock between Bentonsport and Keosauqua, the company have adopted a plan of blasting and excavating a rock channel immediately below the Keosauqua lock, of a depth and width adapted to the navigation. The distance required is about one-fourth of a mile.

This work has also been commenced, and, the president assures me, shall be completed the ensuing season.

PITTSBURG.—*Eighth lock.*—At this point the coffer-dam is now in, and the lock-pit mostly prepared. A quantity of rock material is quarried, and the work fairly started.

LITCHFIELD.—*Ninth lock.*—At this point the lock-pit is mostly excavated, and the masonry is well commenced. A large amount of materials *are* procured, and the work is in a favorable state of progress. The sub-contractors are energetic and practical workmen, and are urging the work to the utmost of their ability.

The estimated work at this point is over $9,000

ORVILLE.—*Tenth lock.*—At this point the coffer-dam is in, the lock-pit is excavated, and the masonry well started. A large quantity of materials *are* prepared for the lock, and the estimates already awarded the contractors are about $10,000. Owing to an unusual sickness amongst his men, the work has been unavoidably delayed.

463 JORDAN'S.—*Eleventh lock.*—At this point the lock-pit is partially excavated. The coffer-dam is in and the masonry well started. Having to change the location of the lock a short distance to get a good foundation, the work has been delayed. A large amount of materials—rock and timber—*are* procured, and the work has progressed with energy and vigor equal, if not greater, than at any other point. The sub-contractors are practical and energetic men. The estimated work and materials, up to the 1st of December, exceeds $15,000.

ALPINE.—*Twelfth lock.*—At this point the chief engineer reports the foundation for the lock as nearly prepared, and a quantity of material quarried for the lock. This work I have not personally examined. The estimated work exceeds $6,000.

WHITE BREAST.—At this point the chief engineer reports the coffer-dam in, and foundation for lock nearly prepared, and a quantity of materials are procured. Estimated work exceeds $3,000, and the work progressing.

The foregoing schedule sets forth the present condition and progress of the improvement, as prosecuted by the D. M. N. & R. R. Co., on their contract, heretofore referred to, with the State, up to 1st December, 1856.

The character and quality of the work upon the lock walls *is* believed to be fully equal, in all respects, to that heretofore constructed by the State, which condition in the original contract, in that respect, is believed to be complied with.

I will now submit to you for further consideration the result and manner of my examinations into the accounts and affairs of each party, as connected with the contract of the 9th June, 1854, and upon which the foregoing schedule of work has been performed by the D. M. N. & R. R. Company for the State of Iowa, which several sums, as shown hereafter in detail, are exhibited by their books and vouchers, and furthermore certified and attested by the chief engineer of the improvement as true, to the best of his knowledge.

Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at St. Francisville, up to December 1st, 1856.

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundation	.....	.....	.....	$800 00	
Masonry in lock walls.....perches..	13	5 00	.....	65 00	
Hydraulic cement.....bbls..	14	3 00	.....	42 00	
Square timber.....f't..	132	14	.....	18 48	
Excavation of earth for foundation.....c. y'ds..	3,420	40	.....	1,368 00	
Excavation of rock above water.....perches..	2,316	1 00	.....	2,316 00	
Wrought iron.....lbs..	300	08	.....	24 00	
Concrete masonry.....c. y'ds..	14	4 00	.....	56 00	
					$4,689 48
MATERIAL DELIVERED.					
Cut stone.....c. y'ds..	125	.....	5 00	625 00	
Rough lock stone..... " ..	40	.....	2 00	80 00	
Square timber.....f't..	132	.....	08	10 00	
Wrought iron.....lbs..	900	.....	07	63 00	
Crib fil'ing.....c. y'ds..	580	.....	50	290 00	
Sand.....	340	.....	50	170 00	
Quicklime.....bush..	610	.....	20	122 00	
					1,360 56
MATERIALS AT QUARRY.					
Rough lock stone.....c. y'ds..	65	.....	1 00	65 00	65 00
					$6,115 04

464 *Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Belfast, up to December 1st, 1856.*

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundation.....	.....	.....	.....	$2,200 00	
Masonry in lock walls.....perches..	1,633	5 00	.....	8,165 00	
Hydraulic cement.....bbls..	227	3 00	.....	681 00	
Square timber.....f't..	492	14	.....	68 00	
Excavation of earth for foundations.....c. y'ds..	5,250	40	.....	2,100 00	
Excavation of rock above water.....perches..	521	1 00	.....	521 00	
Wrought iron.....lbs..	1,850	08	.....	148 00	
Concrete masonry.....c. y'ds..	25	4 00	.....	100 00	
					13,983 88
MATERIALS DELIVERED.					
Cut stone.....c. y'ds..	144	.....	5 00	720 00	
Rough lock stone.....c. y'ds..	37	.....	2 00	74 00	
Round timber.....f't..	80	.....	06	4 00	
Crib fil'ing.....c. y'ds..	341	.....	50	170 50	
Quicklime.....	50	.....	20	10 00	
					979 30
MATERIALS AT QUARRY.					
Rough lock stone.....c. y'ds..	410	.....	1 00	410 00	
Cut stone.....c. y'ds..	131	.....	2 50	327 50	
Crib fil'ing.....c. y'ds..	913	.....	30	292 90	
					1,011 40
MATERIALS IN WOODS OR BANKED.					
Square timber.....f't..	280	.....	04	11 20	11 20
Deduct material procured by the State and used at Belfast:					
Free stone.....c. y'ds..	28	.....	1 75	49 00	
Rough lock stone.....c. y'ds..	11	.....	1 25	13 75	
					62 75
					15,923 03

Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Croton, up to December 1st, 1856.

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Masonry in side walls and abutments.....perches..	977	3 50	.....	$3,419 50	
Hydraulic cement.....bbls..	440	3 00	.....	1,320 00	
Square timber.....f't..	40,535	14	.....	5,674 90	
Oak plank.....M..	41,760	2 25	.....	939 60	
Crib fil'ing.....perches..	5,040	1 00	.....	5,040 00	
Excavation of earth for foundation.....c. y'ds..	3,611	40	.....	1,444 40	
Excavation of rock under water.....perches..	129	2 00	.....	258 00	
Wrought iron.....lbs..	14,105	08	.....	1,128 40	
Round timber.....f't..	17,875	11	.....	1,966 25	
Concrete masonry.....c. y'ds..	2½	4 00	.....	10 00	
Pine plank.....M..	1,025	$60	.....	61 50	
					21,262 55
Deduct materials procured by the State and used at Cr'ton:					
White oak, square timber.....f't..	21,637	.....	6	1,298 22	
White oak, round timber.....f't..	7,500	.....	4½	337 50	
Crib fil'ing.....c. y'ds..	1,690	.....	25	422 50	
Abutment stone.....c. y'ds..	121	.....	75	90 25	
					2,148 47
					19,114 08

465 *Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Plymouth, up to December 1st, 1856.*

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations.....	.....	.....	.....	$2,800 00	
Masonry in lock walls.....perches..	3,754	5 00	.....	18,770 00	
Masonry in side walls and abutments.....perches..	83	3 50	.....	290 50	
Hydraulic cement.....bbls..	1,803	3 00	.....	5,409 00	
Square timber.....f't..	7,904	14	.....	1,106 56	
Crib fil'ing.....perches..	1,190	1 00	.....	1,190 00	
Excavation of earth for foundation.....c. y'ds..	4,147	40	.....	1,658 80	
Excavation of rock under water.....perches..	639	1 00	.....	639 00	
Wrought iron.....lbs..	2,122	08	.....	169 76	
Round timber.....f't..	4,380	11	.....	481 80	
Concrete masonry.....c. y'ds..	40	4 00	.....	160 00	
					32,675 42
MATERIALS DELIVERED.					
Cut stone.....c. y'ds..	253	.....	5 00	1,265 00	
Rough lock stone.....c. y'ds..	25	.....	2 00	50 00	
Square timber.....f't..	4,739	.....	08	380 72	
Square timber, framed.....f't..	2,260	.....	11	248 60	
Round timber.....f't..	2,570	.....	06	154 20	
Round timber, framed.....f't..	9,500	.....	08	760 00	
Oak plank.....M..	22,500	.....	1 50	337 50	
Hydraulic cement.....bbls..	110	.....	2 50	275 00	
Wrought iron.....lbs..	3,700	.....	07	259 00	
Crib fil'ing.....c. y'ds..	100	.....	50	50 00	
Quicklime.....bu..	400	.....	20	80 00	
					3,860 02
MATERIALS AT QUARRY.					
Rough lock stone.....c. y'ds..	1,145	.....	1 00	1,145 00	
Cut stone.....c. y'ds..	155	.....	2 50	387 50	
Crib fil'ing.....c. y'ds..	3,900	.....	30	1,170 00	
					2,702 50
					39,237 94
EXTRA WORK AT PLYMOUTH.					
Excavation of channel thro' old mill-dam.....c. y'ds..	250	.....	50	125 00	
Excavation of channel thro' old mill-dam.....c. y'ds..	300	.....	75	225 00	
Removal of sunken boat.....	.....	.....	.....	10 00	
Grubbing and clearing abutment pit.....	.....	.....	.....	20 00	
					380 00

Deduct materials procured by the State and used at Plymouth:						
Free stone	perches..	267	.....	3 75	1,001 25	
Backing stone	" ..	420	.....	80	336 00	
Backing stone from west side of river	" ..	400	.....	90	360 00	
Crib filling from west side of river	" ..	535	.....	25	133 75	
Crib filling above mill	" ..	397	.....	45	133 65	
Deduct cash paid Jonas Houghton by the State, Dec. 15, 1853	.....	.....	.....	.....	500 00	
Deduct cash paid Jonas Houghton by the State, July 26, 1854	.....	.....	.....	.....	100 00	
						2,564 65
						37,053 29

466 *Estimate of work done by Bonney & Whittlesey, at Keosauqua after the De' Moine' Navigation and Railroad Company had entered into contract with the State, but previous to the time their contract was purchased of them by the D. N. & R. R. Co.*

KEOSAUQUA.

Items.	Old quantities.	New quantities.	Difference.	Price.	Amount.
	Dec. 15, 1853	Jan. 1, 1856.			
Preparing lock foundation	2,100	2,300	$200	.....	$200 00
Masonry in lock walls p'ch's..	2,262	3,406.09	1,144 09	5 00	5,720 45
Masonry in side walls p'ch's..	270	1,650.72	1,380 72	3 50	4,832 52
Hydraulic cement bbls..	961	1,725	794	3 00	2,382 00
Square timber f't..	2,720	27,888	25,168	14	3,523 52
Round timber f't..	1,440	12,654	11,214	11	1,233 54
Crib filling p'ches..	458	4,467	4,009	1 00	4,009 00
Iron bolts lbs..	315	3,478	3,163	08	2,503 04
Oak plank M..	4,449	18,246	13,797	22 50	310 43
Embankment cu y'ds..	.....	279	279	20	55 80
Excavation of foundation for abutment pit cu y'ds..	521	2,753	2,232	40	892 80
Timber in ice-breakers f't..	.....	940	940	14	131 60
					25,794 70
Extra amount on crib filling as per agreement ment with engineer	.....	.....	.....	.....	190 20
					25,984 90
A.					
Difference in value of materials on hand Dec. 15, '53, to Jan. 1, 1856	.....	.....	.....	.....	2,596 32
					23,388 58

For explanation of item marked " A," see next page.

Materials on hand at Keosauqua when the Des Moines Navigation and Railroad Company entered in contract with the State.

Items.	Quantities.	Price.	Amount.
Cut stone delivered perches..	284	2 00	$568 00
Coping, cut and delivered "	70	5 00	350 00
Face stone, (not cut,) delivered "	50	1 50	75 00
Rock lock stone, delivered "	2,006	1 50	3,009 00
Crib filling, delivered "	3,000	30	900 00
Square timber, delivered f't....	1,250	06	75 00
Square timber on bank, two miles above work f't....	2,000	04	80 00
Plank delivered M....	10,600	15 00	159 00
			5,216 00

SECTION 19.

Materials on hand at Keosauqua when the De' Moine' Navigation and Railroad Company bought out the contract of Messrs. Bonney & Whittlesey.

Items.		Quantities.	Price.	Amount.
Stone partly cut and delivered	perch's	17, 168	2 00	343 36
Rough lock and side wall stone, delivered	"	27, 458	1 50	411 87
Coping	"	665	5 00	33 25
Crib filling	"	354	30	106 20
Square timber on hand three miles above lock	f't	16, 512	09	660 48
Round timber on hand three miles above lock	ft	7, 923	04	316 92
Plank delivered	M	49, 840	15 00	447 60
Deduct				2, 619 68
From				5, 216 00
Difference in value of material on hand (dates as above)				2, 596 32

467 *Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Keosauqua, up to December 1st, 1856.*

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations				$1, 500 00	
Masonry in lock walls, perches	1, 071	5 00		5, 355 00	
Hydraulic cement, bbls	115	3 00		345 00	
Square timber, f't	1, 450	14		203 00	
Oak plank, M	1, 000	2 25		22 50	
Crib filling, perches	42	1 00		42 00	
Excavation of earth for foundation, cu. y'ds	198	40		79 20	
Excavation of rock above water, perches	1, 592	1 00		1, 571 00	
Wrought iron, lbs	1, 039	08		83 12	
Round timber, f't	672	11		73 92	
Rock under water in channel, perches	360	2 00		720 00	
Excavation of earth, c. y'ds	3, 800	20		760 00	
Removal of old lock walls, c. y'ds	956	90		860 40	
Slope wall, cu. y'ds	217	2 00		434 00	
					12 049 14
MATERIALS DELIVERED.					
Cut stone, cu. y'ds	192		5 00	960 00	
Rough lock stone, cu. y'ds	17		2 00	34 00	
Square timber framed, f't	232		11	25 00	
Hydraulic cement, bbls	212		2 50	530 00	
Crib filling, cu. y'ds	80		50	40 00	
Sand, cu. y'ds	20		50	10 00	
					$1, 599 52
					13, 648 66
Extra work at Keosauqua, removal of plank from mitre-sill and breast-wall				8 96	
Removal of timber in pier				39 90	
Removal of mitre-sill and old dam				25 00	
Removal of timber from old lock-walls				28 26	
					102 12
					$13, 750 78
Deduct material procured by the State and used Keosauqua:					
Face stone, cu. y'ds	174		2 00	384 84	
Backing stone, cu. y'ds	190		1 50	285 00	
Plank, M	1, 000		$15	15 00	
					$648 78
					$13, 102 78

Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Pittsburgh, up to December 1st, 1856.

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations				500 00	
Excavation of earth for foundations ..c. y'ds..	1,700	40	.....	680 00	
Excavation of rock above water .....perches..	54	1 00	.....	54 00	
					1,234 00
MATERIALS DELIVERED.					
Rough lock stone.....c. y'ds..	120	.....	2 00	240 00	
Square timber.....f't..	10,000	.....	08	800 00	
Round timber.....f't..	1,700	.....	06	102 00	
					1,142 00
MATERIALS AT QUARRY.					
Rough lock stone	1,040	.....	1 00	1,040 00	
Crib filling	514	.....	30	154 20	
					1,194 20
MATERIALS IN WOODS OR BANKED.					
Square timber.....f't..	19,338	.....	04	773 52	
Round timber.....f't..	3,234	.....	03	247 02	
Saw-logs.....M..	82,000	.....	5 00	210 00	
					1,430 54
					5,000 74

468 *Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Litchfield, up to December 1st, 1856.*

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations	.....	5 00			
Masonry in lock-walls .....perches..	470	3 00			
Hydraulic cement.....bbls..	40	40			
Excavation of earth for foundation.....c. y'ds..	1,450	1 00			
Excavation of rock above water .....perches..	1,103				
MATERIALS DELIVERED.					
Cut stone .....c. y'ds..	128	.....	5 00		
Rough lock stone .....c. y'ds..	569	.....	2 00		
Square timber .....f't..	7,600	.....	08		
Round timber .....f't..	6,500	.....	06		
Wrough' iron	900	.....	07		
Crib filling .....c. y'ds..	1,508	.....	50		
Sand	80	.....	50		
Quicklime .....bush..	200	.....	20		
MATERIALS AT QUARRY.					
Rough lock stone.....c. y'ds..	160	.....	1 00	160 00	
Crib filling .....c. y'ds..	100	.....	30	30 00	
					190 00
MATERIALS IN WOODS OR BANKED					
Square timber.....f't..	2,280	.....	04	91 00	
Saw-logs.....M..	41,000	.....	5 00	205 00	
					296 20
					$9,049 70

Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Orville, up to December 1st, 1856.

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundation				1,300 00	
Masonry in lock walls ..... perches..	393	5 00	.....	1,965 00	
Hydraulic cement ..... bbls..	39	3 00	.....	117 00	
Excavation of earth for foundation ..... c. y'ds..	653	40	.....	261 20	
Excavation of rock above water ..... perches..	786	1 00	.....	786 00	
					4,429 20
MATERIALS DELIVERED.					
Cut stone ..... c. y'ds..	78	.....	5 00	390 00	
Rough lock stone ..... c. y'ds..	1,188	.....	2 00	3,760 00	
Square timber ..... f't..	1,100	.....	08	88 00	
Square timber, framed ..... f't..	360	.....	11	39 60	
Round timber ..... f't..	1,200	.....	06	72 00	
Wrought iron ..... lbs..	1,200	.....	07	84 00	
Crib filling ..... c. y'ds..	1,870	.....	50	935 00	
Quicklime ..... bu..	400	.....	20	80 00	
					5,448 60
MATERIALS IN WOODS OR BANKED.					
Square timber ..... f't..	9,020	.....	04	360 80	
					360 80
					10,238 60

469 ***Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at Iowaville, up to December 1st, 1856.***

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundation				$1,400 00	
Masonry in lock walls ..... perches..	315	5 00	.....	1,575 00	
Hydraulic cement ..... bbls..	45	3 00	.....	135 00	
Excavation of earth for foundations ..... c. y'ds..	6,200	40	.....	2,480 00	
Excavation of rock above water ..... perches..	1,592	1 00	.....	1,592 00	
Concrete masonry ..... c. y'ds..	3	4 00	.....	12 00	
					$7,104 00
MATERIALS DELIVERED.					
Cut stone ..... c. y'ds..	330	.....	5 00	1,650 00	
Rough lock stone ..... c. y'ds..	870	.....	2 00	1,740 00	
Square timber ..... f't..	19,000	.....	08	1,520 00	
Round timber ..... f't..	1,262	.....	06	75 72	
Wrought iron ..... lbs..	1,200	.....	07	84 00	
Crib filling ..... c. y'ds..	1,860	.....	50	930 00	
Quicklime ..... bu..	500	.....	20	100 00	
					$6,099 72
MATERIAL AT QUARRY.					
Rough lock stone ..... c. y'ds..	2,000	.....	1 00	2,000 00	
Cut stone ..... c. y'ds..	75	.....	.....	187 50	
					$2,187 50
MATERIALS IN WOODS OR BANKED.					
Square timber ..... f't..	13,413	.....	04	536 52	
					$2,536 32
					$15,927 74

Estimate of work done and materials delivered by the De Moine' Navigation and Railroad Company for lock and dam at Alpine, up to December 1st, 1856.

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations	.....	.....	.....	700 00	
Masonry in lock walls ..... perches..	33	5 00	.....	165 00	
Excavation of earth for foundations ..... c. y'ds..	1,900	40	.....	760 00	
Excavation of rock above water ..... perches..	144	1 00	.....	194 00	
					1,819 00
MATERIALS DELIVERED.					
Cut stone ..... cu. y'ds..	40	.....	5 00	200 00	
Rough lock stone ..... cu. y'ds..	1,150	.....	2 00	2,300 00	
Square timber ..... f't..	14,186	.....	08	1,134 88	
Round timber ..... f't..	8,476	.....	06	508 56	
Crib filling ..... c. y'ds..	360	.....	50	180 00	
Sand ..... cu. yds..	20	.....	50	10 00	
Quicklime ..... bu..	500	.....	20	100 00	
					4,433 44
MATERIALS AT QUARRY.					
Rough lock stone	5	.....	1 00	25 00	25 00
					6,277 44

470 *Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at White Breast, up to December 1st, 1856.*

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations	.....	.....	.....	$600 00	
Excavation of earth for foundation ..... c. y'ds..	725	40	.....	290 00	
Excavation of rock above water ..... perches..	1,426	1 00	.....	1,426 00	
					$2,316 00
MATERIALS DELIVERED.					
Cut stone ..... cu. y'ds..	50	.....	5 00	250 00	
Rough lock stone ..... " ..	45	.....	2 00	90 00	
Crib filling ..... " ..	411	.....	50	205 00	
					545 50
MATERIALS AT QUARRY.					
Rough lock stone ..... c. y'ds..	110	.....	1 00	110 00	
Cut stone ..... " ..	10	.....	2 50	25 00	
Crib filling ..... c. y'ds..	230	.....	30	69 00	
					204 00
MATERIALS IN WOODS OR BANKED.					
Square timber ..... f't..	280	.....	04	11 20	11 20
					$3,076 70

Statement of monies expended on snag-boat and removing snags below St. Francisville, up to December 1st, 1856.

Cash paid A. C. Orr, bill for mattrasses	$26 50
" " Calvin Coats, bill for wood work on block and crab.	37 00
Cash paid Cox & Shelly, bill for blankets	26 25
" " Comstock & Bros, bill for stove and fixtures	29 92
" " J. H. Hager, bill for snag-boat	125 00
" " Geo. W. Birdsall's bills for labor, materials, &c..	149 58
" " Hiatt & Harbine, bill for lumber	106 76
" " Burns & Rentgens, bill for freight, commission on tools, &c	636 14

Cash paid C. P. Conder for labor		2 25
" " check-roll for Aug., Sept., Oct., & Nov., 1856		1,726 86
" " H. Jones, bills for provisions, &c		186 59
" " J. P. Flander, bill for snag-machine		125 00
" " Beatty, Long & Co., bill for iron work on crab and blocks		26 20
Cash paid Geo. W. Langdon, bill for blacksmith work		252 58
" " Hubbard & Robb, bill for ship chandlery		182 60
" " bill for freight and transportation		44 80
" " John Griffiths & Co., bill for lumber, $67 50; skiff, 32 50		100 00
Cash paid Reed, Tracy & Co., bill for chains, rope, &c		396 10
" " S. W. & H. Tucker, bill for hardware		72 14
		$4,250 25

Statement of monies expended on dredge-boats and dredging, up to December 1st, 1856.

Cash paid Geo. W. Birdsall's bill for labor and expenses		$202 27
" " Hiatt and Harbine's bills for lumber		675 59
471 " " W. N. Haskell's bills for labor and expenses		1,869 79
" " H. F. Emery and Co.'s bill for lumber		450 72
" " Connable, Smith & Co., bills for materials		191 34
" " Geo. W. Langdon, bills for blacksmithing		578 63
" " Burns and Rentgens, bills for freight and commission on machinery		545 28
" " H. S. Bean's bill for labor and expenses on machinery		459 91
" " for check-roll for November, 1856		221 45
" " Hubbard & Robb's bill for ship chandlery		89 10
" " John Griffiths & Co.'s bill for lumber, $130 23; skiff, $32 50; two lighters, $800 00		762 73
" " A. C. Orr's bill for mattrasses and bedding		42 45
" " W. M. Foster & Co., bill for blankets		19 50
" " Halloway & Evans, bill for forage, &c		26 58
Cash paid Farrar & Haine, bill for lumber & sash		126 09
" " S. W. & H. Tucker, bill for hardware		71 25
" " Tillinghast, Lane & Ball, bill for hardware		63 71
" " A. C. Thorn & Co., bill for paints & oils		49 09
" " J. C. Osgood, bill for machinery and extras		5,035 62
		$11,682 12

Recapitulation of De Moine River improvement expenditures by De Moine N. & R. R. Co., for construction & materials, at the following points, up to the 1st of December, 1856, to wit:

At St. Francisville	$6,115 04
At Belfast	15,923 03
At Croton	19,114 08
At Plymouth	37,053 29
At Keosauqua	36,491 36
At Pittsburgh	5,000 74

Estimate of work done and materials delivered by the De Moine' Navigation and Railroad Company for lock and dam at Alpine, up to December 1st, 1856.

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations				700 00	
Masonry in lock walls ..... perches..	33	5 00	.....	165 00	
Excavation of earth for foundations ..... c. y'ds..	1,900	40	.....	760 00	
Excavation of rock above water ..... perches..	144	1 00	.....	194 00	
					1,819 00
MATERIALS DELIVERED.					
Cut stone ..... cu. y'ds..	40	.....	5 00	200 00	
Rough lock stone ..... cu. y'ds..	1,150	.....	2 00	2,300 00	
Square timber ..... f't..	14,186	.....	08	1,134 88	
Round timber ..... f't..	8,476	.....	06	508 56	
Crib filling ..... c. y'ds..	360	.....	50	180 00	
Sand ..... cu. yds..	20	.....	50	10 00	
Quicklime ..... bu..	500	.....	20	100 00	
					4,433 44
MATERIALS AT QUARRY.					
Rough lock stone	5	.....	1 00	25 00	25 00
					6,277 44

470 *Estimate of work done and materials delivered by the De' Moine' Navigation and Railroad Company for lock and dam at White Breast, up to December 1st, 1856.*

Items.	Quantities.	Price. Cost.	Price. Est.	Amount.	Total.
Preparing lock foundations				$600 00	
Excavation of earth for foundation ..... c. y'ds..	725	40	.....	290 00	
Excavation of rock above water ..... perches..	1,426	1 00	.....	1,426 00	
					$2,316 00
MATERIALS DELIVERED.					
Cut stone ..... cu. y'ds..	50	.....	5 00	250 00	
Rough lock stone ..... " ..	45	.....	2 00	90 00	
Crib filling ..... " ..	411	.....	50	205 00	
					545 50
MATERIALS AT QUARRY.					
Rough lock stone ..... c. y'ds..	110	.....	1 00	110 00	
Cut stone ..... " ..	10	.....	2 50	25 00	
Crib filling ..... c. y'ds..	230	.....	30	69 00	
					204 00
MATERIALS IN WOODS OR BANKED.					
Square timber ..... f't..	280	.....	04	11 20	11 20
					$3,076 70

Statement of monies expended on snag-boat and removing snags below St. Francisville, up to December 1st, 1856.

Cash paid A. C. Orr, bill for mattrasses	$26 50
" " Calvin Coats, bill for wood work on block and crab.	37 00
Cash paid Cox & Shelly, bill for blankets	26 25
" " Comstock & Bros, bill for stove and fixtures	29 92
" " J. H. Hager, bill for snag-boat	125 00
" " Geo. W. Birdsall's bills for labor, materials, &c..	149 58
" " Hiatt & Harbine, bill for lumber	106 76
" " Burns & Rentgens, bill for freight, commission on tools, &c	636 14

Cash paid C. P. Conder for labor		2 25
" " check-roll for Aug., Sept., Oct., & Nov., 1856		1,726 86
" " H. Jones, bills for provisions, &c		186 59
" " J. P. Flander, bill for snag-machine		125 00
" " Beatty, Long & Co., bill for iron work on crab and blocks		26 20
Cash paid Geo. W. Langdon, bill for blacksmith work		252 58
" " Hubbard & Robb, bill for ship chandlery		182 60
" " bill for freight and transportation		44 80
" " John Griffiths & Co., bill for lumber, $67 50; skiff, 32 50		100 00
Cash paid Reed, Tracy & Co., bill for chains, rope, &c		396 10
" " S. W. & H. Tucker, bill for hardware		72 14
		$4,250 25

Statement of monies expended on dredge-boats and dredging, up to December 1st, 1856.

Cash paid Geo. W. Birdsall's bill for labor and expenses		$202 27
" " Hiatt and Harbine's bills for lumber		675 59
471 " " W. N. Haskell's bills for labor and expenses		1,869 79
" " H. F. Emery and Co.'s bill for lumber		450 72
" " Connable, Smith & Co., bills for materials		191 34
" " Geo. W. Langdon, bills for blacksmithing		578 63
" " Burns and Rentgens, bills for freight and commission on machinery		545 28
" " H. S. Bean's bill for labor and expenses on machinery		459 91
" " for check-roll for November, 1856		221 45
" " Hubbard & Robb's bill for ship chandlery		89 10
" " John Griffiths & Co.'s bill for lumber, $130 23; skiff, $32 50; two lighters, $800 00		762 73
" " A. C. Orr's bill for mattrasses and bedding		42 45
" " W. M. Foster & Co., bill for blankets		19 50
" " Halloway & Evans, bill for forage, &c		26 58
Cash paid Farrar & Haine, bill for lumber & sash		126 09
" " S. W. & H. Tucker, bill for hardware		71 25
" " Tillinghast, Lane & Ball, bill for hardware		63 71
" " A. C. Thorn & Co., bill for paints & oils		49 09
" " J. C. Osgood, bill for machinery and extras		5,035 62
		$11,682 12

Recapitulation of De' Moine' River improvement expenditures by De' Moine' N. & R. R. Co., for construction & materials, at the following points, up to the 1st of December, 1856, to wit:

At St. Francisville	$6,115 04
At Belfast	15,923 03
At Croton	19,114 08
At Plymouth	37,053 29
At Keosauqua	36,491 36
At Pittsburgh	5,000 74

At Litchfield	9,409 70	
At Orville	10,238 60	
At Jordon's or Iowaville	15,927 74	
At Alpine	6,277 44	
At White Breast	3,076 70	
		$166,932 70
For 922 barrels hydraulic cement, delivered at Keokuk, and other points, at $2 50 per barrel		2,305 00
Add construction or expenditures below St. Francisville, including snag-boat, dredge-machine, rope, tackle, & fixtures and two scows, and operating the same three months	15,932 37	
Repairs at Bentonsport and Croton, and assisting boats and tending lock	3,082 37	
		19,014 74

Salaries paid State officers, etc.

1855, May 1. J. H. Bonney, salary, $1,500; expenses, $492 10		1,992 10
" " 30. Geo. Gillaspy, salary, $1,500; expenses, 684 41		2,148 41
472 1846, March. W'm McKay, salary		1,327 00
J. C. Lockwood		862 00
"		500 00
" Nov. 1. W'm McKay		250 00
For State indebtedness, including $55,000 paid Commissioner Bonney		68,453 57
		$262,530 52
Expenses account: Total for engineering, salaries, traveling expenses, employees, servants, and office expenses and other matters, estimated by chief engineer as proper under contract, and chargeable to D. M. R. improvement, from May 24th, 1854, up to December 1st, 1856, amounting to	127,380 29	
Deduct as follows:		
Items transferred to the construction or work below St. Francisville, and salaries of State officers befor' charged, amounting to	18,199 55	
Right of way to Kinnady & Thorn to be adjusted as per agreement	5,000 00	
	23,199 55	
Expense account, prepared as estimated by chief engineer		104,180 74
Total account against improvement		336,711 26

LANDS CERTIFIED.

By Bonney & Gillaspy 88,853.19 acres at $1 25 per acre	111,066 48	
By McKay and Lockwood, 116,636.04 acres, at $1 25 per acre	145,795 05	
		256,861 53
		$109,849 73

The above shows the balance claimed by the company against the improvement of one hundred and nine thousand eight hundred and forty-nine dollars and seventy-three cents, with such percentage as is provided in original contract, and after which 15 per cent. is to be deducted and reserved by the State, until final completion of the improvement.

Now, under the present arrangement between the company and your commissioner the company have abated a large amount of their expenses, and have reduced the engineering and all other expenses, aside from construction, to $13,880 per annum, which abates and renders the above balance 69,480 69

Balance against the improvement 40,369 69

473 Since adjustment of the foregoing account I have discovered a' error of expenses and repairs at Bentonsport and Croton, that was embraced in construction account, below St. Francisville, amounting to 3,082 37.

Which sum of three thousand and eighty-two dollars and thirty-seven cents is to be deducted from construction account as provided in the agreement as well as any other error that may hereafter be discovered, leaving a balance of thirty-seven thousand two hundred and eighty-six dollars and sixty-seven cents, together with any part of said three thousand and eighty-two dollars and thirty-seven cents that is construction account against the improvement.

This balance is reserved by the State, under the present adjustment, until the performance of a certain contingency set forth in said agreement between your commissioner and the company—the company undertaking and agreeing to complete one-fourth part of the line of improvement, from the mouth of the river, so as to make it available for a continuous line of navigation, the longest period in each year to that extent, before they become entitled to said balance above named, against the improvement.

And now, for a more satisfactory exhibit of this adjustment and agreement, I herewith annex a copy of same, marked "A."

NOTE.—The total abatements of the company will approximate $72,000, ascertained and agreed upon to this time, besides placing the balance ascertained against the improvement in a contingent form quite favorable and advantageous to the State.

I would also report—

There is now outstanding indebtedness against the improvement, amounting to $11,000, which fall due in Nov., 1857.

The company acknowledge their liability to pay the sum, and for rea-

son of their non-payment, they assign that the parties holding them will not receive payment and surrender the same till they mature.

Furthermore, I report that—

Under the present adjustment with company, the funds on hand belonging to the improvement the 17th December, 1853, amounting to $4,285 01, was not brought forward for consideration. It is, therefore, a question for equitable adjustment between the company and the State. If the funds are in the hands of the company, the same should be applied in liquidating said indebtedness for the credit of the State, and the balance of the certificates will be a legitamate claim against the improvement.

I also report—

By the present arrangement between your commissioner and the company, it is understood that the titles to the lands for right of way and mill purposes are to rest in the name of the State, according to the terms of the original contract.

The present adjustment has been mutually entered into with a full view of all the embarrassments and difficulties heretofore and at present encountered, and more especially to hasten and ensure the immediate progress and early completion of the work; furthermore, I regard that this arrangement will not conflict with any material issue involved in the present investigation now being had through the joint committee of your honorable body.

The able and comprehensive views of Gov. Grimes, in withholding the patents upon lands certified to the company, meets with general satisfaction. It is not, however, with any view to defeat or with-
474 hold from said company any of their just rights, but rather to protect the State and our own rights under the contract with the company.

It must be borne in mind that the lands are all the security the State holds to secure the completion of the work, and, furthermore, that the policy and progress of the work, as heretofore conducted by the company, has excited suspicions among the best men that there was a want of good faith and intention on the part of the company to carry out and perform their contract.

I confess my own opinions heretofore have favored that view of the case, but under this arrangement my confidence is restored in so much that I believe the best efforts of the company will be hereafter to carry out their contract with the State.

The manifestation of the president of the company in making this arrangement appears to me quite equitable, and it is due from me to admit that his efforts in behalf of this adjustment have been of the most laudable character. The concession' herein made by the company to the State are agreed to by me as highly creditable to the company and equitable to the State.

It is but right to regard it as an evidence of their good faith to perform this agreement.

The president of the company and your commissioner now believe the true policy and interest of both parties is sufficiently defined and understood to warrant the progress of the improvement, in a manner that will ensure the earliest and greatest benefits and blessings to the entire valley.

It will be seen that this policy provides for the immediate completion of the work already commenced below Ottumwa. This being done, the greatest obstructions and embarrassments to navigation are at once overcome. In order to more fully illustrate and demonstrate

this position, I shall assume that a permanent navigation from the mouth of the river for at least one-half the entire line in a continuous manner is more valuable, and more to be desired in a commercial point of view by the citizens of the upper portion of the valley, than any other practicable plan that has hitherto or at present can be suggested.

The first hundred miles of the river from the mouth has continuous shoals and rapids, with good rock bed and high banks, which demonstrates beyond every contingency the practicability of a permanent improvement. The river above Ottumwa is narrower and the channel deeper, and consequently assumes a different character of navigation from that below. It is generally known that the river is navigable for small boats mostly every season above Ottumwa some three or four weeks longer than it is below that point.

The policy heretofore adopted by the company and approved by former commissioners of putting the entire line of improvement in progress at the same time, with a view to the simultaneous completion of the same, was, as has since been demonstrated, impracticable, from the fact that the country is yet new and but partially settled and improved, with only a limited supply of laborers in its vicinity. If the locality of this improvement was more convenient to the densely populated portions of the east, the case would different.

But when it is considered that it is one thousand miles distant from the sea-board, thereby rendering uncertain the procuring of the laborers necessary to its successful progress, then it becomes more apparent that the limited force at command should be employed so as to make the first section of the work available at an early day, whereby the citizens of the valley, as well as the company, can derive some immediate
475 benefit from the great expenditure already made upon the improvement. All past experiences in like great internal improvements warrants me in this view of the subject.

The present arrangement contemplates the continuation of the improvement above Ottumwa, in like manner as that below, at the earliest practicable period, and as soon as it is completed that far.

When it is considered that this basis of policy of completing the first half of the line is effected, that the resources of the company are thereby enhanced in the value of lands and water-power, with the fact of a completed navigation of ninety miles, yielding large revenues to the company, it must at once be seen that it will afford superior facilities to raise funds, and at the same time better secure the valley and the State that this entire improvement can and will be fully completed.

My own observation and experience warrant me in recommending this view of the subject as the most feasible, and best adapted to accomplish the greatest general good, and more especially is it adapted to afford the upper portion of the valley all the benefits to be derived from this great enterprise.

The progress of the work to this time shows an aggregate outlay by the State and the company, of nearly eight hundred thousand dollars, and that portion constructed by the company is mostly in an unfinished condition.

The importance, therefore, is apparent to both parties, that an early and satisfactory adjustment of differences at this crisis of its affairs was called for. If these differences were suffered to remain unadjusted, there is reason to believe the work would languish, the breach become wider rather than less, and the risks and hazards on both sides were eminently calculated to end in tedious litigation, which, to say the least, could not hasten the progress of the De' Moine' River improvement, but on the

contrary would, in the opinion of your commissioner, prove disastrous and ruinous to the improvement, and the best interest of this valley.

In adjusting these differences, your commissioner has aimed to maintain the rights of the State to the fullest extent, and at the same time be governed by the principals of equity properly applied to the rights and relations of the company.

If the basis and condition of this compromise shall meet with mutual approval from the State and the company, then my agency will have accomplished more than I had reason to expect.

The General Government wisely directed and specified the object of the grant. The State accepted it under the restrictions. It is therefore a clear question of right with the citizens of the valley, and that the good faith of the State is pledged that the object of the grant shall not be defeated, but all proper measures taken to secure and maintain it.

The great and fundamental principle of this grant, and that which is paramount to all others, is to spread and diffuse the blessings of commerce and navigation throughout this entire valley; all other advantages being contingent thereto. If we fail of the first and main object aimed at—to bring the commerce of the world to our own doors, on a scale that places us on an equality with our commercial neighbors—then the object of the grant will be thwarted; the commercial and agricultural interests languish, and the citizens of the valley become crippled in their enterprises generally.

Your honorable body will, it is believed, maintain these views, and protect, as far as lies in its power, this munificent grant, against all opposing interests and influences, to the end that its design shall
476 be eventually carried out, and made to accomplish the great and legitimate object of the Government, and secure the rights of the valley.

I would, therefore, respectfully suggest the propriety of authorizing the governor, or the appointment of some other competent person, to act as agent on the part of the State, who, in connection with the D. M. N. & R. R. Co., shall have full power to effect a final settlement with the General Government as to the amount of lands to which the State is entitled under the act of Congress making said grant.

I would also recommend that the legislature pass an act to prevent the serious depredations of trespassers that are being committed upon the timbered lands belonging to this improvement.

All of which is respectfully submitted by

EDWIN MANNING,
Commissioner of De' Moine' River Improvement.

Dated at Keosauqua, Jan. 1st, 1857.

Report of the Commissioner of the Des Moines River Improvement for the year past.

KEOSAUQUA, *January 1st*, 1858.

His Excellency JAMES W. GRIMES,
Governor of Iowa.

SIR: In compliance with law, the undersigned submits the following report of the condition and affairs of the Des Moines River improvement up to December 1st, 1857.

The total amount of expenditures by the Des Moines Navigation and Railroad Company, as claimed by them, up to December 1st, 1856, and

which will appear by my former report of January 1st, 1857, embracing moneys advanced for partial payment of old improvement indebtedness, is..... $366,711 26

Upon which sum the said company claim to have received and credited the State with 205,489.23 acres of land at $1 25 per acre, amounting to the sum of..... 256,861 53

$109,849 73

Showing a balance claimed by said company against the improvement of one hundred and nine thousand eight hundred and forty-nine dollars and seventy-three cents, together with such percentage as is provided in their contract with the State of 9th of June, 1854.

Said balance above named would be augmented by adding per cent. claimed to about the sum of $115,000, which sum they alleged as due and unpaid against the improvement at the date of December 1st, 1854.

Under the adjustment of December 24th, 1856, between the commissioner and the company, as will appear by my former report, the entire balance before mentioned was abated and placed in such a contingent form, so that no part of the same is now, or can hereafter be claimed of the State until one-fourth part of the improvement is completed, and made available for navigation, &c.

This adjustment with said company was regarded by the commissioner as having ascertained and fixed the amount then expended by said company on the improvement under their contract with the State; but said adjustment did not contemplate that the legal title of the lands previously certified to said company by the register of said improvement should pass to said company, or in any wise be affected thereby.

477 The amount, therefore, admitted as expended for debts, liabilities, improvement, engineering, &c., up to December 1st, 1856, by said company, upon said improvement, &c., is $256,861 53

To which sum is to be added the amount expended since Dec. 1, 1856, and up to Dec. 1, 1857, (said amount is reported by the acting engineer, as will appear herewith in exhibit marked "B,") say.....$77,193 70

Less 15 per cent reserved by the State till final completion..... 11,599 05

65,594 65

$322,456 18

The statements above show the aggregate amount; and all that can be claimed to have been advanced and expended by said Des Moines Navigation and Railroad Company for and upon said improvement since their commencement to December 1st, 1857, cannot exceed the sum of $322,456 18.

In the agreement and adjustment between the company and the commissioner, of the 24th of December, 1856, the following language is used in sec. 1; "It is agreed, and the said party of the first part does hereby covenant and undertake to prosecute said work from the mouth of the river, in a continuous line of navigation, from the mouth of said river upwards, under the supervision of the commissioner of said improvement; and it is expressly understood and agreed that no work shall be

done that shall not contemplate the making of such continuous line of navigation, except with the written as positive consent of said commissioner."

The commissioner gave the company and engineer notice that any work not prosecuted in accordance with said agreement would not be entitled to estimates till the navigation was completed to such points where the work was prosecuted. The following amounts of work have been estimated and certified by the acting engineer since said agreement was made, which the commissioner regards as improper, and not due the company from the State till the written and positive consent of the commissioner is obtained, as provided in said agreement of December 24, 1856.

Total expenditures brought forward		$322,456 18
Estimates rejected by commissioner as follows, viz:		
Work estimated at White Breast	$2,703 50	
" " " Amsterdam	547 00	
" " " Iowaville	7,805 62	
" " " Orville	7,860 53	
" " " Litchfield	1,047 30	
		19,963 95
		$302,492 23
The following amounts are estimated for repairs:		
At Croton	$2,169 40	
At Bentonsport	4,042 22	
		6,211 61
Which sums, if improper under the contract of June 9th, 1854, would reduce expenditures above claimed to		$296,280 61
478 The following items rejected by commissioner as improper in engineer's estimate, December 1st, 1857, to wit:		
Expenses and supplies of dredge-boats	$704 66	
Lock repairs	126 02	
Removing obstructions at Pittsburg for which the company are liable to pay damages for having put in	35 70	
20 per cent. on amount deducted above	5,408 39	
		6,277 77
		$290,005 84
Furthermore, I have reason to believe excessive estimates have heretofore been made for lock foundations, etc., which will approximate the sum of	$10,000 00	
Loss of work and materials at the Keosauqua work, estimated by commissioners	10,000 00	20,000 00
		$270,005 84

A word of explanation may be necessary as to the abatement before

made for losses sustained by the State at the Keosauqua work. It will be seen by exhibit herewith marked "B," that the sum of $15,961 64, has been estimated for work the last year at that point, and various estimates before. The present condition of the entire work at this point is but little further advanced than it was at the time the company received it from Messrs. Bonney & Whittlesey, the original contractors, who were bound to complete the work in two years.

The commissioner is of the opinion, therefore, that the foregoing exhibit approximates and shows all the expenditures of the Des Moines Navigation and Railroad Company, that can be regarded as proper and legitimate, under the contract between the company and the State, from their commencement up to Dec. 1st, 1857, say..... $270,005 84

For the above the company have received certificates for 205,489.23 acres of land; also, they hold a requisition on the register, now in dispute, for 24,000 acres, which, estimated at $1 25 per acre, is..... 286,861 53

$16,855 69

Showing a balance in favor of the State, if said 24,000 acres were certified to said company, of $16,855 69. The commissioner, therefore, believes that said requisition, made August 6th, 1857, was without good and sufficient considerations, and that the same may be held to be void until said company are deemed to have complied with their contract with the State.

I will now submit my statement on expenditures still further:

The foregoing exhibit shows the amount claimed to have been expended by the Des Moines Navigation and Railroad Company, from December 1st, 1856, to December 1st, 1857, say..... $77,192 70

Less 15 per cent. reserved under contract..... 11,599 05

$65,594 65

479 The following items embraced in above are rejected by the commissioner as improper estimates and excluded at this time under the agreement of December 24th, 1856, viz:

Work at White Breast.....	$2,703 50	
" " Amsterdam.....	547 00	
" " Iowaville.....	7,805 62	
" " Orville.....	7,860 53	
" " Litchfield.....	1,047 30	
	19,963 95	
Doubtful claims:		
Repairs at Croton and Bentonsport.....	6,211 62	
Expenses and supplies on dredge-boat.....	704 66	
Lock repairs at Croton and Bonaparte.....	126 02	
Removing obstructions at Pittsburg.....	35 70	
Twenty per cent. on above.....	5,408 39	
		32,450 31
		$33,144 34

The true balance or sum proper to be estimated to the said company for expenditures on the improvement from December 1, 1856, to December 1, 1857, under the adjustment and agreement of December 24, 1856, is above shown to be thirty-three thousand one hundred and forty-four dollars and thirty-one cents; making a discrepancy (in favor of the State) in the amount claimed by the company, (see Exhibit "B,") of $44,048 39.

I will now submit such other facts as are regarded important at this juncture of the affairs of the improvement.

Subsequent to the adjustment of December 24, 1856, before mentioned, to wit, January 29th, 1857, the legislature passed an act authorizing and requiring the commissioner and assistant commissioner therein provided for, to proceed to settle and adjust all matters relating to the affairs of the Des Moines improvement, &c., &c. Accordingly, on the day of March, the commissioner, James F. Wilson, esq., in obedience to the law before referred to, did proceed to discharge the duties therein contemplated, by meeting the agents of the Des Moines Navigation and Railroad Company at Burlington, Iowa, agreeably to appointment, and did there endeavor to negotiate and arrange a settlement with said company, with a view to a further and early progress of the improvement.

After two ineffectual trials to adjust the difficulties between the State and the company, the said Des Moines Navigation and Railroad Company elected and concluded to determine their right and the validity of their contract with the State through a judicial proceeding. A suit was therefore instituted against the commissioner in the district court of Des Moines County, Iowa, claiming and asking a writ of mandamus, requiring the commissioner to transfer and convey to the said company over eighty-nine thousand acres of land.

To this application for a mandamus a demurrer was filed on the part of the commissioner, which raised the question as to the validity of the several contracts between the State and the company, and also assigning that the application for a mandamus did not show such a compliance with their contracts upon the part of the company as entitled them to a spe*acif*ic performance on the part of the State. The cause
480 was taken to the supreme court of the State by appeal. The supreme court held that the contracts of the 9th and 29th of June, 1854, were valid, and that the act of the general assembly of the State, approved January 29th, 1857, so far as it was based upon the hypothesis that no valid contract existed, was of no effect. The supplemental contracts of September 27th and December 25th, 1855, were held to be void.

The adjustment of December 29th, 1856, in so far as the same was a settlement by and between the commissioner and the company, was sustained.

The supreme court dismissed the application for a writ of mandamus for the reason, among others, that it did not show such a compliance upon the part of the company with their contracts as entitled them to a specific performance upon the part of the State; and the company not choosing to amend their application and risk an issue of fact with the State upon the question of their performance, the litigation was ended.

The commissioner, employed in behalf of the State, the Hon. R. P. Lowe and C. C. Nourse, esq'r's, who conducted the cause with signal ability, maintained the rights of the State, and defeated the claim for a mandamus, as well as the claim for salaries, office expenses, &c.

In order to a more satisfactory knowledge of the case I herewith annex a brief of the cause. (See exhibit marked "A.")

Immediately following the decision obtained in said cause, which was hastened and prosecuted with commendable zeal by the counsel in the case, in order, if possible, to afford and fix a basis that would enable the parties to readjust differences, whereby the improvement should be more vigorously prosecuted, the agents of the company and the commissioner met on the 5th of August, 1857, and the company proposed a more vigorous prosecution of the work than previously had been done, and furthermore agreed to prosecute and complete such locks and dams as the commissioner should direct, and such as were in an unfinished condition.

In order, therefore, to afford the desired aid and facilitate the progress of the improvement to the greatest practicable extent the commissioner at once consented to stipulate terms with the agents of the company, whereby the work should be resumed and vigorously prosecuted under the contract of 9th of June, 1854; and inasmuch as the supreme court had decided that said instrument was valid and subsisting between the State and the company, (vide exhibit marked "A,") an agreement, of which the following is a copy, was thereupon made:

(*Copy.*)

"Memorandum of an agreement made the 5th day of August, 1857, between the commissioner of the Des Moines River improvement of the first part, and the Des Moines Navigation and Railroad Company of the second part, witnesseth:

That, in consideration that said party of the second part shall immediately put under contract to responsible contractors the work at Croton, Plymouth, Bentonsport, and Keosauqua, the said party of the first part agrees to, and now does make to the said party of the second part, a certificate for thirty thousand dollars' worth of land, at the rate of $1 25 per acre for estimates due said party of the second part on work up to August 1, 1857, said certificate for said lands to be placed in the hands of Guy Wells, chief engineer of said work, to be held by him until the work is vigorously commenced at all of said
481 points, and the prosecution of the same is secured, in the opinion of said Wells, to a like amount of thirty thousand dollars, and then the said certificate shall be subject to the order of said company. It is also agreed that the sub-contractors shall be fully paid by the company for work heretofore done as estimated.

"This adjustment not to be considered as an agreement superceding or in anywise changing or affecting any former contract in force between the parties.

(Signed) "E. MANNING,
"*Com. Des Moines River Improvement.*
"O. CLARK,
"*Vice-President D. N. & R. R. Co.*"

Although the work was commenced in mode and manner agreed upon, the same was not vigorously prosecuted except at one point. The contractor at Keosauqua lock and dam has prosecuted the work with vigor and dispatch. At the other points, however, the work was partially countermanded by the agent of the company very soon after its commencement, and before the $30,000 was expended as provided in last agreement, thereby defeating the spirit and intention of said agreement

of August 5th, 1857, upon which the company now demand 24,000 acres land. If this was the only ground of defence I should not rely upon it as sufficient to ground a controversy upon.

But there are other reasons more grave and weighty, and more vital to the "improvement" than any question heretofore raised on the contract between the company and the State. At the date of said agreement, to wit, August 5th, 1857, between the company and the commissioners, and immediately previous thereto, the agent of the company, General Clark, proposed as a basis for the future prosecution of the work, and mutual understanding between the State and the company, and in order to reconcile conflicting interpretations of the contract of the 9th of June, 1854, that they, the D. N. & R. R. Co., would secure the expenditure to the State the full sum stipulated for in the contract, to wit, $1,300,000 as soon and whenever the aid of the State was rendered to obtain the balance of the lands upon the "grant" from the General Government. The same proposition and construction given to said contract has often been made by the agent of the company, and he has furthermore persistently contended that said company would expend upon said improvement between two and three millions of money.

The agreement, therefore, of the agent of said company to satisfactorily arrange to expend the said sum of $1,300,000, for the lands of the grant, without regard to their limit, at and before the making of the said requisition of August 5th, 1857, was a consideration with the commissioners that entered into and caused in part said certificate for 24,000 acres of land to be made; and now, inasmuch as said promises to do and perform as aforesaid, have been utterly, and, as the commissioner believes, intentionally violated by said company, the said requisitions in question, for this, amongst other reasons, has been countermanded. In justification of my interpretation of the law, and the contracts on the subject, (vide the law authorizing the commissioner and assistants to contract said improvement, Acts 1852–'3, chap. 103, page 162,) "That the said commissioners and assistants in contracting for means to carry on said improvement, shall not make any contract or agreement with any company or individual, under the provisions of this act, or
482 any laws now in force or which may be in force at the time of making said contract or agreement, unless such contract or agreement stipulates for at least thirteen hundred thousand dollars, to be faithfully expended in the payment of debts and liabilities of said improvement, and to the completion thereof to the greatest extent practicable." The following is section 8, in contract between the State and D. N. & R. R. Co., June 9, 1854:

"The said party of the second part, (the State of Iowa,) on their part hereby covenant and agree with the said party of the first part, (D. N. & R. R. Co.,) to sell and convey to the said party of the first part, in manner and upon terms hereinafter provided, all of the lands donated to the State of Iowa for the improvement of the Des Moines River, by act of Congress of August 8th, 1846, which the said party of the second part had not sold up to the 23d day of December, 1853, for which said lands the said party of the first part covenants and agrees, in manner and form as fixed by this agreement, to pay the sum of thirteen hundred thousand dollars."

Now, here is the language of the law authorizing the contract, and a section of the contract itself wherein the consideration is plainly stipulated and expressed.

The company have agreed to pay and the State has agreed to take $1,300,000 for the lands, &c. The sum is fixed for the aggregate, the

contract don't call for or contemplate any given or certain quantity of land, but is definite in other respects, insomuch that the company get all that belongs to the grant after the date specified.

Now, the D. N. & R. R. Co., repudiate and decline to pay the sum agreed upon for said "grant," and this refusal has just been announced by the company and their policy disclosed. The fact is no longer disguised that the said company now utterly refuse to acknowledge any liability whatever to the State, to pay more than $1 25 per acre for the land of the grant, and if the same exceed a certain amount, then they will, or will not, as they please to elect.

This question now is the great cause of embarrassment.

The commissioner attended a meeting of the company in New York City in September last, at which time an agent was authorized by the company to visit Washington, and to act in conjunction with the commissioners in such measures as were found necessary to obtain the balance of the lands from the General Government.

General O. Clark, as agent for the company, and the commissioner visited the proper Department at Washington, and found the case to rest upon Attorney General Cushing's opinion of May, 1856.

This opinion limits the grant to the north line of the State, and imposes conditions upon the State and its assignees, to wit: If the lands are accepted under his decision, then the State, as well as the company, shall execute relinquishments to the General Government against any further claim for lands under said act. The present incumbent of the "Interior Department," (Hon. Jacob Thompson,) proposes to carry out the verdict of "Cushing," if the State and the company accept it, and conform to its provisions, and make relinquishments as therein required, or if either party, the State or the company, elect to reject Mr. C.'s opinion, then the case will be open for a new hearing before the officer of that Department. The language of Mr. Thompson on the subject is pertinent and to the point. He says that if a fair interpretation of the act extends the grant to the sources of the river, the State will be entitled and shall have it, but not otherwise.

Upon this announcement, the commissioner proposed to the
483 agent of the company to co-operate with the company, and either accept or reject the "Cushing" opinion, leaving the company to elect which course to adopt. At this juncture of our proceedings, the agent of the company, (General Clark,) required the commissioner to accept the lands, and the interpretation of the act as provided in Attorney General Cushing's opinion rendered in the case, and that upon the condition that the commissioner of the State would release the D. N. & R. R. Co., upon their contract of 9th of June, 1854, pro-rata, and to the same extent that the State and the company are required to relinquish to the General Government under Cushing's opinion, then, upon that condition, the company would co-operate with the State, but upon no other or better terms.

This proposition was rejected by the commissioner as not intended or contemplated in the contracts between the company and the State, and thus the case now stands.

The agent of the company makes it an alternative that henceforth the State must admit the company's interpretation of the contract of 9th June, 1854, and for every $30,000 expended on the same they shall have lands for *at* $1 25 per acre, without regard to whether the lands thus required will yield the State, in the aggregate, the sum of $1,300,000, as stipulated (and which is the paramount object and consideration of said contract) or not.

The company's construction of said contract, in connection with their requirements of the State to accept the lands of the "grant" to the State line, and furthermore the release they demand of the State, involves a question of at least $400,000 importance to the State, and is, in the opinion of the commissioner, the gravest and most vital question that has ever arisen between the D. N. & R. R. Co., and the State. In view of the fact, the lands heretofore certified to the State are nearly exhausted, there being but 60,000 acres, and the further fact that the State and the company have entirely failed to co-operate in any proper measure, whereby the balance of the lands belonging to the grant can be properly secured to the State and the progress of the improvement in like manner secured.

Your commissioner regards that these facts justify the conclusion that a crisis has already reached the affairs of the company and the State, as connected with the improvement, that warrant and justify the course adopted by the commissioner, in order that the right of the State may be thereby protected.

I will now submit a brief view of the work in progress, and the condition and extent it has attained under the auspices and conduct of the D. N. & R. R. Co., the past three and a half years. And for a more detailed history of the same, in part, I will refer to my former report of January 7th, 1857.

The work at present at "Croton" is restoring and repairing. The dam was heretofore constructed by the company, and for which the company have been fully estimated in the adjustment of Dec. 24th, 1856.

The commissioner regards that the present expenditure in alterations and repairs cannot be legitimately estimated to said company under the contract of 9th June, 1854.

The work at Bentonsport is also work of restoring and repairs, but it must be borne in mind that this work was constructed by the State prior to the contract with said company, and the dam has always been regarded as poor work, owing to bad materials and the temporary manner of its construction.

484 A question, therefore, may reasonably arise whether the company should not be entitled to estimates for restoring and repairing the work.

The work at Keosauqua I am gratified to report as having changed hands, and is now in possession of a reliable and vigorous sub-contractor, who has prosecuted the work the past three months with energy and dispatch.

The lock walls are now ready for the gates. If the high water does not prevent finishing the gates, it is confidently expected to have the lock in working order by the opening of navigation in the spring.

The work at the points above Keosauqua has been suspended by the company for several months. The amount of work performed at the different locations the past year will be shown by exhibit, marked B.

Your commissioner would furthermore report that a question of much importance has recently arisen between the commissioners, register, and the company, in respect to the act of your commissioner in countermanding an order or requis'ion for 24,000 acres of land, of date August 6th, 1857. In order that this question should be clearly understood, and in justice to the State, the company, and myself, it is proper the facts and the circumstances connected therewith, and which are relied upon for justification and defence should be shown. Therefore I submit as follows:

1. The company failed to prosecute the work as agreed.

2. The company had not paid their sub-contractors as agreed, which was a precedent condition.

3. The company had not performed $30,000 additional work stipulated for.

4. The company claim estimates for repairs and restoring work, which I reject.

5. The company neglect and refuse to vest the title to rights of way and water-power in the name of the State of Iowa, which is a violation of a covenant of their contract.

6. I have good reason for believing the sub-contractors have not been fully paid estimates for work claimed and performed since August 1st, 1857.

The company have failed to perform their covenant to State and to pay old liabilities of the improvement.

8. I believe the State is entitled to reclamation for excessive estimates on lock foundations, &c., provided for in my adjustment of December 24th, 1856, say to the amount of $10,000 or $12,000.

9. The agent of the company threatened the commissioner with a suspension of the work if he (the commissioner) would not release the company, and make new stipulations on their contract.

10. The acts of the company have satisfied the commissioner that the improvement will not progress or be performed, as the State requires, under the contracts of June 9th, 1854.

The reasons before named are regarded by the commissioner as sufficient for recalling the order made August 6th, 1857, for 24,000 acres land, but other and greater reasons may be assigned. It is now about three years and a half since the D. N. & R. R. Co. commenced their contract upon the improvement, and, up to the present time, it is a melancholy fact that said company claim to have expended nearly a half million of dollars, and with this immense expenditure claimed by them, there is not a single lock or dam completed by them upon the work.

Furthermore, the condition in the contract to complete one-fourth part of said improvement each and every year has entirely failed,
485 and under this covenant of the company, if the State may claim damages, the entire amount expended by the company would be absorbed and offsetted in damages arising from non-compliance.

In other respects the said company are equally in default, insomuch that the navigation of the river has been unnecessarily obstructed by means of improper and unnecessary materials put into the channel of said river at Pittsburgh, clearly in violation of their contract, and which have caused great losses to boatmen and shippers in consequence of detention, storage, extra freights, &c.

These failures, defaults, and non-compliance on the part of said company must be regarded as the results of an ill-advised policy, in part at least, in the commencing as well as progressing of said work. Now these facts and conclusions are maintained, and it is shown that the State is not in default or chargeable with wrongs against the company. How can the company seek and enforce the State to perform its covenants before the considerations and stipulations are first performed by themselves?

The paramount object of the Government and of the State, and of the contract between the parties, was to improve the navigation of the river Des Moines to the extent stipulated for. Now, how does this proposition stand, and have the D. N. & N. R. Co. made any improvement

whatever in the navigation of said river? The answer must be emphatically, no.

Have the said company prosecuted the improvement of said river according to mode and manner stipulated for in their contracts?

Answer. They certainly have not.

Have the company virtually repudiated and denied their obligation to expend $1,300,000 for lands of the "grant," tolls, and rents?

Answer. Most emphatically they have.

With these views before us, it is quite manifest that the affairs of the State and the company, as connected with the improvement, are extremely complicated and embarrassing.

The necessity, therefore, for prompt and early measures to be taken to adjust and compromise, if possible, all matters in variance with the D. N. & R. R. Co., and, in failure thereof, a resort to judicial proceedings will be inevitable to maintain the rights of the State.

It is now of the most vital importance that a wise and just policy be adopted, and the works from St. Francisville to Keosauqua be completed the ensuing season. The materials on hand at points above Keosauqua, it is believed, can be transferred to points below, so as to aid and materially facilitate the completion of said works, and at the same time save the materials from loss. The works are now so far advanced between these points that it would be an intolerable abuse of the means appropriated to this object, if they were not at once speedily used to complete this part of the line of improvement.

The D. N. & R. R. Co. have notified some if not all their sub-contractors, to suspend work upon the improvement. The commissioner has been informed, through the acting engineer of the work, that said company are ready, and now invite propositions from the State for compromise and settlement.

The necessity now is apparent and manifest that an early adjustment of affairs between said company and the State is of the first importance.

It is likewise equally important and necessary that immediate steps be taken to secure and definitely settle with the General Government as to the extent of and the quantity of land the State is entitled to receive under the grant of August 8th, 1846.

This question, so far as the opinion of eminent jurists have been obtained, may be considered as settled in favor of the claims of the State. The proper Department at Washington now desires the State to act in the premises, and either accept or reject Attorney General Cushing's opinion pronounced in the case, and thereupon have the question determined.

I shall, therefore, recom'end to your consideration the appointment of a commissioner, with full power to settle and conclude all matters in variance, or prosecute the same to final settlement with the D. N. & R. R. Company, as well as any and all other settlements now pending and connected with the Des Moines River improvement. I would, furthermore, recom'end that said commissioner or agent should be fully authorized and empowered to effect and conclude a final settlement with the General Government in the matter of the Des Moines River grant of August 8th, 1846.

I would, furthermore, report that the sub-contractors upon the line of the improvement have received official notice, by order of the company, to suspend work upon their several jobs until further notice. The work of repairs commenced at Croton is left in an unfinished and dangerous condition, so much so that the proprietors of the mills and power at

that point report that they are in imminent danger of a great sacrifice if these repairs are not immediately prosecuted to completion.

The expenditure necessary to this object is estimated at from four to five thousand dollars.

The work at Keosauqua is also left in a situation that still obstructs the navigation of the river. The lock-walls are nearly completed, and sufficiently so to receive the gates and machinery necessary to operate the same, and render the navigation free from obstruction at that point.

The upper portion of the valley has heretofore been greatly injured by means of this obstruction, and the immediate completion of the work is the only remedy that will insure and obviate this evil that is now so generally felt throughout the valley.

The old liabilities of the improvement which the D. N. & R. R. Co. have failed to liquidate, are now being pressed upon the commissioner for payment or suitable provision therefor.

The following claims are especially urged, to wit:

Caleb O. Halstead report' himself holding thirteen bonds of $5,000	$6,500
Thirteen coupons, $40 each, due Nov. 1, 1857	$520
Bangs, Bro's & Co., alleged claims against the improvement	$14,000 00

Which, if not paid or provided for, they notify the commissioner that suits will be instituted therefore.

In order to give an approximating understanding of the amount necessary to complete the works from St. Francisvill' to Keosauqua, I submit the following estimate, predic'ted upon a judicious expenditure, as a probable amount required, to wit:

At St. Francisville, say	$40,000 00	
Less amount expended	6,115 04	
		$33,884 96
At Belfast	40,000 00	
Less amount expended	15,923 03	
		$24,076 97
487 At Croton, repairs		$4,000 00
At Plymouth from $15,000 to		$20,000 00
At Bentonsport, repairs		$10,000 00
At Keosauqua, including channel below lock		$20,000 00
Amount brought forward		$111,961 93
To which add above indebtedness		$21,020 00
Total, and required to complete works before mentioned, and pay indebtedness		$132,981 93

From the foregoing data your commissioner believes immediate provisions are called for to meet the emergencies as stated.

The lands undisposed of heretofore certified to the State, after deducting lands certified by commissioners to D. N. & R. R. Co., as reported by the register, is $61,527\frac{78}{100}$ acres, out of which may be deducted a certificate in dispute of 24,000 acres.

Leaving	37,527.78 acres
At present un'cumbered, to which may be added lands not yet certified by the Department at Washington, and which are decided as due the State by Attorney Gen'l Cushing to the north line of the State	300,000 acres

To which may be added the amount of lands due the State under the "grant," as claimed to the sources of the river, estimated at	400,000	acres
Making a total of	737,527.78	acres
Amount of lands certified to D. N. & R. R. Co	205,489.64	acres
Certificates or requisitions dated August 6th, 1857, in dispute	24,000	acres
Making a total of lands belonging to the grant of August 8th, 1846	967,017.43	acres

Against the above the D. N. & R. R. Co. have expended upon the improvement about	$270,000 00
Old liabilities against the improvement remaining unpaid, say	21,020 00
	$291,020 00

All of which is respectfully submitted.

EDWIN MANNING,
Com. D. M. R. Improvement.

OFFICE OF COM. D. R. IMP'T,
Keosauqua, January 1st, 1858.

(Copy.)

A schedule of work furnished by Guy Wells, acting engineer Des Moines River improvement.

Amount of work done on the Des Moines River improvement, from December 1st, 1856, to December 1st, 1857, at the following-named points, viz:

488	St. Francisville		$449 16
	Belfast		1,235 00
Croton			2,169 40
Plymouth			17,372 01
Bentonsport			4,042 22
Keosauqua			15,961 64
Litchfield			1,047 30
Orville			7,860 53
Iowaville			7,805 62
Amsterdam			547 00
White Breast			2,703 50
			$61,193 38
Deduct timber brought from above that had been previously estimated	$1,510 18		
Amount previously estimated	847 50	2,357 68	
		$58,835 70	
Engineering		4,625 00	
Lock repairs at Croton and Bonaparte		126 02	
Expenses and supplies of dredging-boat		704 66	
Endeavoring to remove obstructions at Pittsburgh		35 70	
		$64,327 08	

Add 20 per cent	12,865 62
	$77,192 70
Deduct certificate of August 6, 1857	30,000 00
	$47,192 70

EXHIBIT B.

Supreme Court.—June term, 1857.

THE STATE OF IOWA ON THE RELATIONS OF W'm C. Johnson, president, &c.,
vs.
THE COMMISSIONER OF THE DES MOINES RIVER Improvement.

Points presented by the demurrer to the petition suggested in argument and decided by the court:

1st. Is the contract of June 9th, 1854, valid and subsisting?

We are of the opinion that the contract does not violate, and was not made in contravention of, the act of Congress making the grant.

STOCKTON, J., contra.

We are of the opinion that the acts of June 19 and January 24, 1853, (Laws of 1853, pages 62 and 162,) do not dispense with the argument of the prior statutes, that the governor should approve any contract made thereunder.

WOODWARD, J., contra.

489 We further conclude, however, that the necessity of approval has been waived by the repeated and express action of the executive and legislative department of the Government; that, by the action of these departments, a construction and validity has been given to said contracts, which the State is now estopped from denying.

STOCKTON, J., contra.

EXHIBIT A.

The said contract does not conform satisfactorily and even technically with the requirements of the acts of the legislature, under which it was made.

STOCKTON, J., contra.

It is therefore concluded, on the first proposition, that the said contract of June 9, 1854, is valid and subsisting.

STOCKTON, J., contra.

2nd. Are the supplemental contracts of June 9 and June 29, 1854, September 27 and December 5, 1855, valid and subsisting between the parties?

It is objected that the duties of assistant commissioner ceased after the original contract was made, and therefore these supplemental contracts should have been made with the commissioner and assistant; then the three should have united and concurred; and a majority could not act or contract.

We conclude that so much of section 4 of the act of January 24, 1853,

as provides that the duties of said assistant commissioners shall not extend any further than to aid such commissioner in negotiating such contracts or agreements, as in said act are contemplated, was not intended to inhibit them from taking part in any negotiations that might become necessary to carry out the contract made, or to accomplish the general object and purpose of said act, in disposing of the lands and work, and securing the improvement, but was intended to provide that their duties should not extend to the others and various matters, devolving upon the principal commissioners in the prosecution of the improvement.

STOCKTON, J., contra.

We hold that the assistant commissioners, therefore, might take part in such subsequent negotiations, and that the commissioner, and one of the assistants (being a majority of the board) could make a valid contract.

STOCKTON, J., contra.

The said supplement', under the law, required the approval of the governor as much as the original contract. Those dated June 9 and June 20, 1854, are, we think, though not thus approved, recognized and sanctioned by the action of the two departments of Government, and are binding and of force in like manner and for the same reason that the original contract is binding.

STOCKTON, J., contra, as to so much as treats the action of the State in waiving the necessity of approval by the governor.

WOODWARD, J., not concurring in the opinion that the approval of the governor is necessary.

As to contracts of September 27 and and December 5, 1855, we think they are invalid for the want of the approval of the governor, and that there is nothing sufficiently to show that said contracts have been
490 recognized, approved, and acted upon by the State, so as to waive the requirement of approval.

WOODWARD, J., holding the approval unnecessary, and doubting, if necessary, as to the acts of the State being sufficient to amount to a recognition.

We, therefore, conclude that the supplemental contracts of June 9 and June 29, 1854, are valid and binding, and that those of September 27 and December 25, 1858, are not binding, Stockton J., dissenting as to the first proposition, and Woodward, J., dissenting as to the last.

3rd. Is the contract of December 29, 1856, valid and binding?

So far as it makes a new contract, or modifies or changes former ones, it would seem prima facia to be invalid, being signed alone by the commissioner, and not approved by the governor.

So far as it is a statement of account or settlement, it is binding, and section three, therefore, and such other parts of said agreement as can be regarded as a settlement with the company as contractor or creditor, is valid and subsisting under the law of February 5, 1851. (Laws of 1851, page 138, sec. 28.)

By WRIGHT, C. J.:

I have no doubt that this agreement might be valid as a settle , or of a claim preferred, but for the fact that, taking it all together, I conclude that, so far as it can be called or termed a settlement in its terms, such terms are made dependent or conditional upon those provisions which are termed the contract parts; that such contract parts were the inducement to such settlement, (as such settlement was the inducement

to the contract part;) that in short, the parts relating to the settlement, and those relating to the contract proper, are so intimately connected, that you cannot sever and hold the one binding and the other not; the entire contract is valid or it is all invalid.

I wish to add further that the petition does not seek to avoid said agreement, either as a contract or settlement. The State insists upon its validity and binding force; and I cannot, therefore, see why, as the case now stands, it should not be carried out and performed.

4th. Is the act of Jan. 29, 1857, in relation to the Des Moines River improvement valid as against the company, and how far does it invalidate the contract of December 29, 1856, or any of its parts?

The contract of June 9, 1854, being held valid, it follows as a consequence that the act of Jan. 29, 1857, in its essential features, is of no practical force or effect; the predicate or basis upon which it was enacted (the invalidity of the previous contracts with the company represented by the relator) proving to be incorrect, it, of course, has nothing upon which to act.

STOCKTON, J., contra. The foregoing position, of course, is not to be construed that said act can in no event have an operative effect. The company may have forfeited all rights acquired under such contract, or may voluntarily assent to modifications of existing contracts, or make a new and other arrangement under said act, or some other individual or company (if the present company shall appear to have forfeited their contract) may be contracted with, and, under these and perhaps other circumstances, the said act would certainly not be without force and effect; but, so far as it treats the contract referred to as being in-
491 valid, and that the company have no rights thereunder, it can, as already stated, have no effect.

5th. What is meant by the concluding clause of the contract of December 29, 1856, which provides that in the event of the passage of any act of the legislature invalidating the rights of either party to this agreement, then it shall become inoperative and void, is perhaps, not very clear. We conclude, however, it cannot mean an unsuccessful attempt to invalidate, and that, therefore, the said act, as already shown, being of no practical force or validity, the right of neither party to said agreement can be violated, and, that, therefore, said contract or agreement is not inoperative by reason of anything in said act contained.

STOOKTON, J., not assenting to so much of this position as treats said act as invalid.

6th. Under the contract of June 9, 1854, is it proper to include in the estimates to be paid by the State in lands, the salary of the book-keeper and office-rent of officers by the company?

We unite in answering this enquiry in the negative. The State (by the lands) pays the State officers and those engaged in the construction of the work, and not the officers and servants of the company proper. The company, we think, is paid by the consideration provided for in the principal contract, and should pay its own officers and employees, and the expenses of the same.

7th. We are to enquire, finally, whether the relator is entitled to a writ of mandamus, as prayed for in the petition.

A majority of the court conclude that, even if the contract of June 9, 1854, is valid, yet under the showing made in the petition and exhibits, the writ should not be granted.

First. Because the petition does not show that so much of the said contract as requires one-fourth of the work to be completed in each year has been completed.

Second. That this is only a proceeding in another form to enforce the specific performance of this contract, and that the petition does not show a performance on the part of complainant, nor a readiness, willingness, or effort to perform.

Third. That from this petition and record it is doubtful at least whether the amount claimed in the petition, or any amount in fact, is due on the contract and settlement with Manning.

WRIGHT, C. J. I do not think these questions legitimately arise at this stage of controversy. The cause is before us by appeal from the decision of the court below, on the demurrer to the petition. This demurrer, of course, admits the truth of those facts which are pleaded in the petition. Taking the petition as true, therefore, and unanswered, I think that the commissioner should be required to certify the lands a' claimed, or show cause, in answer to the writ, why he does not. In showing such cause the question suggested by a majority of the court might legitimately arise. At present I think that the matters for our determination do not involve the question whether said company have complied with their contract, except so far as such questions may arise from the averments, or want of averments, in the petition.

When the issue shall be made and cause heard, I think it will
492 be time to adjudicate these objections. It is the opinion of the majority of the court that the mandamus should be refused by the court.

(Endorsed as follows:) No. . Equity. W'm Baker v. Jesse Williams. Stipulations as to the facts on the part of Williams. Filed October 19, 1870. George B. Corkhill, clerk.

The following is a statement of the disposition by the State of Iowa of certain lands approved and certified to said State by the Department at Washington, under the grant of Congress of August 8th, 1846, to aid in the improvement of the navigation of the Des Moines River.

Total quantity of lands deeded to the De' Moine' Navigation and Railroad Company, below the Rac'oon Fork, as given in the deeds to said company, and which are upon record in my office, is 53,553.17 acres.

Total quantity of land sold by the State of Iowa to individuals below the Rac'oon Fork, as above, by the records and plats of my office, is 267,507.64 acres.

Total quantity of lands sold by the State of Iowa to individuals above the Rac'oon Fork, as shown by the records and plats of my office, is 58,869.64 acres, which lands sold above the Rac'oon Fork to individuals are particularly described as follows:

Parts of sections.	Sec.	Town.	R'ng.	Area.	To whom patented.	Date of patent.
All except N. E. of N. E	7	79	23	629. 44		
S. W. of N. E.; N. W. ¼; N. W. of S. W., and N. W. of S. E. ¼	17	79	23	280. 00		
S. W. of N. W., & W. ½ of S. W	31	80	23	143. 34		
Lot No. 6	9	78	24	43. 75		
S. ½ & fr. on left bank R	17	78	24	320. 47		
All	19	"	"	653. 12		
N. W. of N. W	21	"	"	40. 00		
N. W. of N. E; E. ½ of N. W.; N. W. of N. W.; N. ½ of S. W., & S W. of S. W	29	"	"	280. 00		
N. E. ¼; E. ½ of N. W., & N. ½ of S. E	31	"	"	320. 00		
E. ½; N. ½ of N. W., & S. ½ of S. W	1	79	24	508. 62		
S. W. of N. W	3	"	"	40. 00		
N. W. of S. W., & lots 5 & 6	5	"	"	121. 70		
N. ½ of N. E.; S. W. of N. E.; S. ½ of S. E., & W. ½ of sec	7	"	"	523. 42		
W. ½ of N. E.; W. ½ of S. E.; W. ½ of S. W., & S. E. of S. W	11	"	"	280. 00		
E. ½ sec.; S. W. ¼, & E. ½ of N. W	13	"	"	560. 00		
All	15	"	"	640. 00		
W. ½ of S. W.; S. E. of S. W., & lots 7, 8, 9	17	"	"	298. 25		
S. ½ of sec.; N. E. ¼, & S. E. of N. W	19	"	"	323. 91		
W. ½ of S. W., & S. W. of N. W	21	"	"	120. 00		
All of sec. except N. E. of N. E	23	"	"	600. 00		
S. ½ of N. W., & W. ½ of S. W	25	"	"	160. 00		
N. ½ of N. E., & N. ½ of N. W	29	"	"	160. 00		
N. W. ¼	31	"	"	169. 96		
S. ½ of S. W. ¼	7	80	24	86. 61		
S. W. ¼	9	"	"	160. 00		
N. W. ¼, & S. E. ¼	15	"	"	320. 00		
N. E. of N. E	17	"	"	40. 00		
E. ½ of N. E	19	"	"	80. 00		
W. ½ of S. W.; E. ½ of S. E., & S. W. of N. W	23	80	24	200. 00		
W. ½, & N. E. ¼	25	"	"	480. 00		
N. E. of N. E.; S. W. of S. W., & S. E. ¼	27	"	"	240. 00		
E. ½ of S. E., & S. W. of S. W	29	"	"	120. 00		
W. ½ of N. W.; N. E. of N. W.; S. W. ¼, and lots 2, 3, 4, 5, & 6	31	"	"	527. 43		
N. W. ¼, & W. ½ of S. E	33	"	"	240. 00		
E. ½ of N. E	35	"	"	80. 00		
All of sec. except N. E. of N. E	1	78	25	643. 65		
All of sec. except W. ¼ of S. W	3	"	"	617. 32		
E. ½ of N. E.; S. W. of N. E.; N. W. of N. W., & S. E. of N. W	11	"	"	200. 00		
N. E. of S. E	13	"	"	40. 00		
W. ½ of N. E.; S. E. of N. E.; W. ½ of sec., & S. E. ¼	23	79	25	600. 00		
All of	25	"	"	640. 00		
All of sec. except S. W. of S. W	27	"	"	600. 00		
493 W. ½ of N. E.; W. ½ S. E., & W. ½ sec	35	"	"	480. 00		
S. ½ of N. E	1	80	25	80. 00		
Lots 2, 3, 4, 6	3	"	"	212. 04		
N. E. of N. E.; S. E. of N. W.; E. ½ of S. W., & S. E. ¼	5	"	"	332. 81		
N. E. ¼; W. ½ of sec. & E. ½ of S. E	9	"	"	560. 00		
Lots 1, 2, & 6	11	"	"	105. 83		
Lots 3, 4, 7, 8	13	"	"	180. 18		
N. ½ of sec.; S. E. of S. W., & N. ½ of S. E	15	"	"	480. 00		
S. W. of N. E.; S. ½ of N. W.; N. ½ of S. W.; S. E. of S. W., & W. ½ of S. E	17	"	"	320. 00		
E. ½ of N. E.; E. ½ of N. W., & N. W. of N. W	21	"	"	200. 00		
E. ½ of sec.; E. ½ of N. W.; E. ½ of S. W., & S. W. of S. W	23	"	"	520. 00		
All except S. W. of S. E	25	"	"	600. 00		
E. ½ of N. E.; N. W. of N. E.; N. ½ of S. W., & E. ½ of S. E	27	80	25	280. 00		
S. W. of N. E.; S. E. of N. W.; N. ½ of S. W., & S. W. of S. E	29	"	"	200. 00		
N. W. ¼; E. ½ of S. W., & S. E. ¼	33	"	"	400. 00		
E. ½ of N. E.; N. W. ¼, & E. ½ of S. E	35	"	"	320. 00		
W. ½ of sec	3	81	25	307. 06		
All of	5	"	"	617. 84		
N. ½ of N. E., & S. E. ¼	7	"	"	248. 54		
W. ½ of N. E.; N. W. ¼; N. W. of S. W.; S. E. of S. W., and S. W. of S. E	9	81	25	360. 00		
N. W. ¼, & S. ½ sec	11	"	"	480. 00		
N. W. ¼, & S. ½ sec	13	"	"	480. 00		
N. E. ¼; S. W. of N. W.; E. ½ of S. W.; S. W. of S. W.; & S. E. ¼	15	"	"	480. 00		
N. E. ¼; N. E. of N. W.; N. W. of S. W.; S. E. of S. W.; E. ½ of S. E., & S. W. of S. E	17	"	"	400. 00		
E. ½ sec.; E. ½ of N. W.; N. W. of N. W., & E. ½ of S. W	19	"	"	529. 17		
N. E. of N. E.; S. ½ of N. E., & S. E. ¼	21	"	"	280. 00		
S. ½ of N. E.; W. ½, & S. E. ¼	23	"	"	560. 00		

Parts of sections.	Sec.	Town.	Rng.	Area.	To whom patented.	Date of patent.
S. W. of N. E.; W. ½ sec., & W. ¼ of S. E	25	"	"	440. 00		
E. ¼ of N. E.; E. ½ of N. W., & S. ½ sec	27	"	"	480. 00		
N. ½ of N. E., & lots 5, 6, 7, & 8	29	"	"	268. 37		
N. E. ¼; N. W. ¼, & N. ¼ of S. E	31	"	"	415. 87		
Lots 2, 3, 4, 5, 6, & S. W. of S. W	33	"	"	251. 91		
N. ½ of N. E., & N. W. of S. E	11	80	26	120. 00		
W. ¼ of N. W	13	"	"	80. 00		
N. ½ of S. E., & S. W. of S. E	1	81	26	120. 00		
N. ½ of sec.; S. E. ¼, & N. E. of S. W	3	"	"	460. 56		
All except S. W. of N. W	5	"	"	555. 26		
N. ½ sec.; N. ½ of N. E.; S. W. of N. E.; N. ½ of S. W., & S. E. of S. W	9	"	"	560. 00		
S. W. of S. W., & lots 5, 6, 7, 8, 9	11	"	"	302. 04		
E. ½ of N. E.; S. W. of N. E.; N. W. ¼, & E. ½ of S. E	13	"	"	360. 00		
N. W. of N. E.; N. W. ¼, & S. ½ sec	15	81	26	560. 00		
N. ½	21	"	"	320. 00		
N. ½ and S. E. ¼	23	"	"	480. 00		
S. ½ sec.; S. E. of N. W., & lots 1, 2, 3, 4	25	"	"	545. 42		
N. E. ¼; E. ½ of N. W., & N. ½ of S. E	27	"	"	320. 00		
N. W. of N. E	35	"	"	40. 00		
N. ½ of N. E.; S. E. of S. E., & S. ½ of S. W	1	82	26	197. 96		
N. ½ of N. E.; S. W. of N. E.; E. ½ of N. W.; N. W. of N. W.; E. ½ of S. W.; W. ½ of S. E., & S. E. of S. E	3	"	"	448. 00		
N. W. of N. E.; N. W. of N. W.; W. ½ of S. W.; S. E. of S. W.; & lot No. 4	5	"	"	245. 93		
N. ½, and S. E. ¼	7	"	"	240. 00		
N. ½ of N. E.; E. ½ of S. W.; S. W. of S. W.; S. ½ of S. E.; S. W. of N. W., lots 3, 5, 7	9	"	"	443. 70		
W. ½ of N. E.; S. E. of N. E.; N. ½ of N. W.; S. W. of N. W.; N. ½ of S. E., & S. E. of S. E	11	"	"	360. 00		
W. ½ of N. W.; N. E. of S. W.; W. ½ of S. W	13	"	"	200. 00		
E. ½ of N. E.; N. W. of N. W.; N. ½ of S. E. *of S. E.*, & lots 5, 6, 7	15	"	"	363. 49		
N. E. ¼; N. E. of N. W.; S. W. ¼, N. E. of S. E., & W. ½ of S. E	17	"	"	480. 00		
W. ½ of N. E., & S E. of N. W	19	"	"	120. 00		
N. W. of N. E.; N. E. of N. W.; S. ½ of N. W.; N. ½ of S. W., & S. E. ¼	21	"	"	480. 00		
W. ½ of N. E.; W. ½ of N. W.; N. E. of S. E., & W. ½ of S. E	23	82	26	280. 00		
N. ½ of N. W.; E. ½ of S. E., & lots 1, 2, 3, 5, 6, & 7	27	"	"	380. 01		
S. E. of N. E.; N. W. of S. W., & N. ½ of S. E	29	"	"	160. 00		
E. ½ of N. E	31	"	"	80. 00		
N. ½ of N. E.; N. W. ¼, S. ½ of S. E., & N. E. of S. E. S. ¼	33	"	"	360. 00		
	35	"	"	320. 00		
494 W. ½ of N. E.; N. W. ¼; S. W. ¼, & W. ½ of S. E. ¼	1	83	26	391. 20		
W. ½ of N. E. & W. ½ of sec	3	"	"	314. 86		
E. ½ of S. E.; N. W. of S. E.; E. ½ of N. E., & S. W. ¼	5	"	"	333. 00		
Lot 2	7	83	26	43. 15		
All of	9	"	"	640. 00		
A. W. of N. E.; E. ½ of N. W.; N. W. of N. W.; S. ½ of NS. W., & N. W. of S. E	11	"	"	280. 00		
W. ½ of S. W., & N. ½ of N. W	15	"	"	160. 00		
N. ½ of N. E.; N. W. of N. W.; S. W. of N. E., & lots 2, 8	17	"	"	219. 17		
N. ½	19	"	"	308. 74		
E. ½; W. ½ of N. W., & S. ½ of S. W	21	"	"	476. 22		
All except N. E. of N. E	23	"	"	600. 00		
E. ½ of N. W., & N. W. of N. W	25	"	"	120. 00		
All except N. E. of N. E	27	"	"	600. 00		
S. E. of N. E.; N. ½ of S. W.; S. E. of S. W., & lots 4, 8, & 9	29	83	26	271. 91		
N. E. ¼; E. ½ of N. W.; N. E. of S. E., & S. ½ of S. E	31	"	"	360. 00		
E. ½ of N. E.; E. ½ of S. E.; S. W. of S. W.; lots 2, 6, 8	33	"	"	315. 80		
W. ½ sec.; N. E. ¼, & N. ½ of S. E	35	"	"	560. 00		
N. E. ¼; N. ½ of S. W.; E. ½ of N. W.; N. W. of N. W., & S. W. ¼	5	84	26	518. 52		
N. ½ of N. E.; S. E. of N. E.; N. E. of N. W., & S. E. of S. E	7	"	"	200. 00		
E. ½ sec.; S. W. of N. W., & S. W. ¼	9	"	"	520. 00		
W. ½ sec	15	"	"	320. 00		
All except N. W. of N. E	17	"	"	600. 00		
All except N. W. of N. E	19	"	"	584. 50		
All of	21	"	"	640. 00		
S. ½ of N. W.; S. W. ¼, & W. ½ of S. E	23	"	"	320. 00		
All	27	"	"	640. 00		
All	29	"	"	640. 00		
E. ½ of N. E.; N. W. of N. E.; S. ½ of N. W.; S. E. of S. E., & lot 1	31	"	"	275. 66		
All except W. ½ of S. W	33	"	"	560. 00		
S. W. of S. W.; W. ½ of S. W.; S. E. of S. W., & S. ½ of S. E	35	"	"	240. 00		

Parts of section.	Sec.	Town.	R'ng.	Area.	To whom patented.	Date of patent.
S. W. of S. W	17	85	26	40.00		
E. ½ of N. E.; E. ½ of N. W., & E. ½ of S. E	19	85	26	240.00		
N. ½; N. E. of S. W., & S. E	29	"	"	520.00		
W. ½ of N. E.; S. E. of N. E.; W. ½ of N. W.; S. E. of N. W.; S. ½ of S. E., & S. E. of S. W	31	"	"	348.54		
N. E. ¼; E. ½ of N. W.; S. W. of N. W.; E. ½ of S. W.; N. W. of S. W.; W. ½ of S. E., & S. E. of S. E	33	"	"	520.00		
S. ½ of S. E	9	87	26	80.00		
S. E. of N. E., & S. E. of N. W	15	"	"	80.00		
N. W. of N. E.; W. ½ of N. W.; N. W. of S. W.; S. E. of S. W., & S. ½ of S. E	17	"	"	280.00		
S. E. of S. W	21	"	"	40.00		
S. W. of S. W	29	"	"	40.00		
W. ½ of N. W.; S. W. of S. W.; lots 1, 2, 3, 4, 7, 8, 9	1	83	27	412.97		
S. ½ of N. E.; N. W. ¼; N. ½ of S. E., & S. W. of S. E	11	"	"	360.00		
S. W. of N. E. & N. ½ of S. W	13	"	"	120.00		
N. E. of N. E.; N. W. ¼, & N. ½ of S. W	25	"	"	280.00		
Lots 1, 2, & 3	1	84	27	133.62		
S. E. of S. W	3	"	"	40.00		
S. ½ of N. E.; S. E. of N. W.; N. ¼ of S. W., and N. E. of S. E	11	"	"	240.00		
All except N. W. of N. W	13	"	"	545.56		
S. E. of S. W., & S. E. of S. E	15	84	27	80.00		
S. E. of N. E.; S. W. of S. W., & N. E. of S. E	21	"	"	120.00		
All except lot 8	23	"	"	558.09		
N. ½; N. ½ of S. E.; N. E. of S. W., & lot 2	25	"	"	471.70		
N. E. of N. W.; E. ½ of S. E., & lots 1 & 2	27	"	"	195.53		
S. E. ¼ & lots 1, 2, & 3	35	"	"	261.25		
E. ½ of S. W., & E. ½ of S. E	1	85	27	160.00		
S. E. of N. E.; N. W. of N. W.; N. E. of S. E., & lot 7	3	"	"	179.20		
N. E. of N. E	9	"	"	40.00		
S. E. of S. W.; W. ½ of S. E., & lots 3, 5, 6, & 7	11	"	"	273.31		
N. E. ¼, & N. W. of S. E	13	"	"	200.00		
E. ½ of S. E	15	"	"	80.00		
E. ½ of N. E	23	"	"	80.00		
N. E. of N. E.; N. W. ¼; S. E. of S. W., & N. W. of S. E.	25	"	"	280.00		
S. W. of S. W., & lots 5 & 7	27	"	"	140.54		
S. ½ of N. E	35	"	"	80.00		
S. E. of S. E., & lots 6 & 7	3	86	27	157.35		
S. E. of N. E., & N. E. of S. W	15	"	"	80.00		
Lots 3 & 4	21	"	"	60.38		
S. W. of S. W	23	"	"	40.00		
E ½ of N. E., & lot 1	27	"	"	111.13		
E. ½ of N. W.; N. ½ of S. E., & S. E. of S. E	35	86	27	200.00		
S. ½ of N. E., & S. ½ of N. W	1	87	27	160.00		
S. ½ of N. W., & W. ½ of S. W	11	"	"	160.00		
495 S. W. of N. W.; S. W. of S. W., & lots 7 & 8	15	"	"	182.20		
Lots 2 & 3	23	"	"	79.10		
W. ½ of N. W., & S. E. of S. W	31	88	27	101.92		
S. W. of N. W., & lot 8	1	87	28	93.35		
S. W. ¼	3	88	28	160.00		
Lot 4	5	"	"	38.43		
N. ½	9	"	"	320.00		
S. 2. of S. E. & lots 1, 2, 3, 4, 5, 6, 8	15	"	"	394.13		
N. W. ¼; S. E. ¼, & E. ½ of S. W	17	"	"	350.55		
S. ½ of S. W.; S. ½ of S. E., & lot 4	23	"	"	218.88		
N. W. ¼, & W. ½ of S. W	25	"	"	240.00		
Lot 1	27	"	"	32.60		
E. ½ of N. E	35	"	"	80.00		
W. ½ of N. W.; W. ½ of S. W., & S. E. of S. W	17	89	28	200.00		
N. ½ of N. E.; E. ½ of N. W.; N. W. of N. W., & lots 1, 2, & 3	29	89	28	318.21		
S. W. of S. W	7	90	28	40.15		
All of	19	89	28	464.84		
Total No. of acres				58,869 64		

Of the lands described in the foregoing lists, the following tracts appear, by the records of my office, to have been sold on Dec. 23, 1853, and subsequent thereto, and are all the lands of the Des Moines River grant sold by the State to individuals, but what were sold prior to Dec. 23d, 1853, as appears by the records in my office.

N. ½ of N. E.	15	81	26	80.	Sold Dec. 23, 1853.
Lot No. 4	5	88	28	38. 43	" do.
Lot No. 2	15	"	"	64. 00	" do.
All of	19	89	28	464. 84	" January 19, 1854.
S. E. ¼ of S. W. ¼	17	"	"	40. 00	" May 8, 1855.
Total				687. 27	

STATE OF IOWA:

REGISTER OF THE LAND OFFICE,
Des Moines, Aug. 12th, 1870.

I, C. C. Carpenter, register of the State land office of the State of Iowa, hereby certify that the statements made in the foregoing, and each one of them, are correct, as appears by the records and plats in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal date above written.

[SEAL.] C. C. CARPENTER, *Register*.
By JOHN M. DAVIS, *Deputy*.

(Endorsed as follows:) Filed Oct. 19th, 1870. George B. Corkhill, clerk.

EXHIBIT No. 39.

Know all men by these presents that the Cedar Rapids and Missouri River Railroad Company, in consideration of the sum of four hundred dollars in hand paid by Jesse C. Williams, of Benton County, State of Iowa, doth hereby grant, bargain, sell, and convey unto the said Jesse C. Williams, the following-described premises situated in the county of Boone, & State of Iowa: The northeast quarter (¼) of section twenty-three (23), township eighty-three (83) north, range (27) twenty-seven west 5th P. M., containing, according to the United States survey,
496 one hundred and sixty and $\frac{00}{100}$ acres; reserving, however, the right of way to said railroad company, one hundred feet wide, where the line of said railroad or any of its branches has been or may hereafter be located over said land, and reserving also to said railroad company or its assigns, all mines, minerals, and mineral products, with the full right to work the same, except that the said railroad company, shall pay the owner of said land at the rate of $25 per acre for any surface land necessary to be used, aside from said right of way in working such mines, minerals, and mineral products: To have and to hold the premises above described unto the said grantee, his heirs and assigns forever. And the said grantor doth hereby covenant with said grantee that it is lawfully seized of the said premises; that the same are free from incumbranc'; that it has good and lawful authority to sell and convey the same; and the said grantor doth hereby covenant to warrant and defend the title against the lawful demand whatsoever.

In testimony whereof the said grantor hath set its seal and caused these presents to be signed by its vice-president and a member of its executive committee, the twenty-fourth day of February, 1865.

W. W. WALKER, *Vice-President*. [L. S.]
W. W. WALKER, *Sec'y*.
JOHN J. BLAIR, *Member of Ex. Com.*

Witness to John J. Blair's signature—
C. E. VAIL.

[U. S. internal revenue, 50 c., W. W. Walker, vice-president, 2|24, 1865.]

STATE OF IOWA, *Boone County, ss:*

Be it remembered that, on this twenty-fourth day of February, 1865, before me, the undersigned, a notary public in and for said county, came W. W. Walker, who is personally known to be the identical person whose name is subscribed to the foregoing instrument as vice-president of The Cedar Rapids and Missouri River Railroad Company, the grantor herein named, and acknowledged said instrument to be the act and deed of said company, by the several officers whose names are subscribed to said instrument, thereto appointed, voluntarily done and executed.

In witness whereof I have hereunto set my hand and notarial seal, the day and year in this certificate above-written.

I. J. MITCHEL,
Notary Public.

Filed for record, Feb'y 24th, 1865, at 4½ p. m.
A. C. LOWRY, *Recorder.*

This deed recorded in book G, pages 598 & 599 of deed records, Boone Co., Iowa.

STATE OF IOWA, *Boone County, ss:*

I, A. J. Barkly, recorder in & for Boone County, Iowa, do hereby certify that the foregoing is a true copy of the deed from C. R. & M. R. R. R. Co. to J. C. Williams, as found of record in my office.

Witness my hand at Boonsboro, Iowa, this 7th day of Oct., A. D. 1870.

A. J. BARKLEY, *Recorder.*

(Endorsed:) Substituted for the original, & the original is withdrawn by consent, & this copy filed Oct 19, 1870.
GEORGE B. CORKHILL, *Clerk.*

497 United States circuit court, district of Iowa.

JESSE C. WILLIAMS, COMP'T, *ag't* } Cross-bill in chancery.
WILLIAM BAKER, RESP'T.

Now, to wit, March 23d, 1870, the parties to the above-entitled cause hereby agree and consent that the complainant may this day take the deposition of John Browne, which, when so taken, is to be used on the trial of the above cause. It is also agreed that Thomas Cavanagh, notary public, shall take said deposition, and that the usual notice is hereby waived; said deposition, however, to be subject to all exceptions for incompetency and relevancy.

ISAAC COOK &
N. M. HUBBARD,
Atty's for Compl't.
FINCH & RIVERS,
Att'ys for Def't.

Now, to wit, M'ch 23, 1870, came the parties to the above-entitled cause, the complainant by Isaac Cook & N. M. Hubbard, his solicitors, and the defendent by Messrs. Finch & Rivers, his solicitors, and, in pursuance of the above agreement, the deposition of John Browne is taken as follows:

JOHN BROWNE, being by me, the undersigned, first duly sworn on his corporeal oath, deposes as follows:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. 1. John Browne; of lawful age; residence, Des Moine', Iowa; land agent by occupation.

Int. 2. What office, if any, have you held in the Des Moines Navigation and Railroad Company, and how long have you held such office?

Ans. 2. I have been in the employ of the company about fifteen years; have had charge of their office & general business; been director for last two years; during the last twelve years I have had particular charge of their lands in the State of Iowa, and been its only officer and agent in this State.

Int. 3. What land did the De' Moine' Navigation and Railroad Company own, lying south of the Rac'oon Fork of the Des Moines River, on the first day of January, 1864, as shown by the books of the said navigation & railroad company?

Ans. 3. I think six hundred and thirty-five or six hundred and forty acres of one class, and about three thousand acres of another.

Int. 4. What was the value per acre of the first class mentioned, and of the second class, during the years 1864 & 1865?

Ans. 4. The whole worth eight and ten dollars per acre, on an average.

Int. 5. What other assets did the said navigation & railroad company have on the first of January, 1864; state them fully, other than the land above the mouth of Rac'oon Fork of the Des Moines River.

Ans. 5. I think we had mortgages and contracts amounting to about three thousand dollars, and a claim of twenty thousand dollars against the D. V. R. R., in suit, and now pending.

Int. 6. What was the indedtedness of the said De' Moine' Navigation & Railroad Company on the first of January, 1864?

Ans. 6. I have no means of knowing; the treasurer of the company, whose office is in New York, has such matters in charge.

498 Int. 7. Do you know whether, on the first of January, 1864, either from your own knowledge or from an inspection of the books of the said navigation and railroad company, or from the statement of the officers of said company, whether there was any bonded indebtedness outstanding and unpaid against said company; and if so, state the amount of the same, or as near the amount as you are able?

(Here the solicitor for the defendent objects to the above interrogatory for the reason that it asks for hearsay, secondary evidence, for the reason that the records are best evidence.)

Ans. 7. I understand, from general information, that there was a balance of the bonded debt outstanding at that date, but of the amount I have no knowledge.

Int. 8. Do you know whether or not, in 1864, there was any outstanding indebtedness against the said navigation & R. R. company other than its bonded indebtedness? If so, state the amount of the same, as near as you are able, and the nature and character of it.

Ans. 8. Guy Wells, of Keokuk, had a claim of twenty-four hundred dollars, and I had a claim of two thousand dollars, for services. These are all the claims that I have personal knowledge of as owing in the State of Iowa.

Int. 9. Was there any material change in the financial condition of said company as to assets and liability from what you have already stated during the years 1864, 1865, & 1866? If so, state such changes.

Ans. 9. I am not aware of any change. If there had been, I should have known it.

Int. 10. What was the outstanding bonds of the De' Moine' Navigation & Railroad Company worth during the years 1864 & 1865?

Ans. 10. I suppose in those years they would be worth what we paid in 1867, '8, & '9, which was from thirty to forty cents on the dollar, coupons included.

Int. 11. How were the bonds secured?

(Same objection as to interrogatory No. 7.)

Ans. 11. They were secured by mortgage on the lands owned by the company made in the year 1855.

Int. 12. What was the amount of bonds originally issued by the company, secured by the mortgage on the lands?

(Same objection as int. No. 7.)

Ans. 12. I do not know accurately; but my recollection of the amount given by the treasurer's report—given in 1858 or '59—is about four hundred thousand dollars.

Int. 13. Have any of these bonds been paid? If so, how?

(Same objection as to int. No. 7.)

Ans. 13. The bonds of the company were receivable as cash in payment for lands sold by the company during the years '58, '59, & '60. Nearly all the payments received for lands were in the bonds of the company.

Int. 14. What amount of bonds were outstanding against the company, to your knowledge, at any time since 1864?

Ans. 14. Of my personal knowledge I have only known of about fifteen thousand dollars, and of that amount there may be now out ten or twelve thousand dollars.

Cross-ex:

Int. 1. State if you have made any estimate of the value of the lands lying below the Raccoon Fork of the Des Moines River that
499 were owned by the company on the 1st day of January, 1864? If so, state the same.

Ans. 1. I believe I have answered this question in direct interrogatory.

Int. 2. State if you have made an estimate of the value of the lands belonging to or claimed by the N. & R. R. Company, on the first day of January, 1864, including the lands lying below the Rac'oon Fork of the Des Moines River, and the lands lying above said fork, which were outside the R. R. limits named in the grant to the State for R. R. purposes, in May, 1856; if so, state the amount.

Ans. 2. I have made an estimate of the lands owned and claimed by the company, in January, 1864, including those above and below Des Moines, and outside the disputed limits, and the aggregate value was about one hundred and forty-two thousand dollars, based on an average scale of six to eight dollars per acre.

Int. 3. State now whether you have made an estimate of all the lands owned by the company on the first of January, 1864, including those refer'ed to in the last interrogatory; and if so, state the same.

Ans. 3. I made an examination and find the company owned about fifty-four thousand acres, of land, which, at an average value of six dollars per acre, gives about three hundred and thirty thousand dollars, which I estimate as their value at that time.

Re-examination:

Int. 1. Were all these lands you have been testifying about a part of the lands known as Des Moines River improvement lands, granted by

JOHN BROWNE, being by me, the undersigned, first duly sworn on his corporeal oath, deposes as follows:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. 1. John Browne; of lawful age; residence, Des Moine', Iowa; land agent by occupation.

Int. 2. What office, if any, have you held in the Des Moines Navigation and Railroad Company, and how long have you held such office?

Ans. 2. I have been in the employ of the company about fifteen years; have had charge of their office & general business; been director for last two years; during the last twelve years I have had particular charge of their lands in the State of Iowa, and been its only officer and agent in this State.

Int. 3. What land did the De' Moine' Navigation and Railroad Company own, lying south of the Rac'oon Fork of the Des Moines River, on the first day of January, 1864, as shown by the books of the said navigation & railroad company?

Ans. 3. I think six hundred and thirty-five or six hundred and forty acres of one class, and about three thousand acres of another.

Int. 4. What was the value per acre of the first class mentioned, and of the second class, during the years 1864 & 1865?

Ans. 4. The whole worth eight and ten dollars per acre, on an average.

Int. 5. What other assets did the said navigation & railroad company have on the first of January, 1864; state them fully, other than the land above the mouth of Rac'oon Fork of the Des Moines River.

Ans. 5. I think we had mortgages and contracts amounting to about three thousand dollars, and a claim of twenty thousand dollars against the D. V. R. R., in suit, and now pending.

Int. 6. What was the indedtedness of the said De' Moine' Navigation & Railroad Company on the first of January, 1864?

Ans. 6. I have no means of knowing; the treasurer of the company, whose office is in New York, has such matters in charge.

498 Int. 7. Do you know whether, on the first of January, 1864, either from your own knowledge or from an inspection of the books of the said navigation and railroad company, or from the statement of the officers of said company, whether there was any bonded indebtedness outstanding and unpaid against said company; and if so, state the amount of the same, or as near the amount as you are able?

(Here the solicitor for the defendent objects to the above interrogatory for the reason that it asks for hearsay, secondary evidence, for the reason that the records are best evidence.)

Ans. 7. I understand, from general information, that there was a balance of the bonded debt outstanding at that date, but of the amount I have no knowledge.

Int. 8. Do you know whether or not, in 1864, there was any outstanding indebtedness against the said navigation & R. R. company other than its bonded indebtedness? If so, state the amount of the same, as near as you are able, and the nature and character of it.

Ans. 8. Guy Wells, of Keokuk, had a claim of twenty-four hundred dollars, and I had a claim of two thousand dollars, for services. These are all the claims that I have personal knowledge of as owing in the State of Iowa.

Int. 9. Was there any material change in the financial condition of said company as to assets and liability from what you have already stated during the years 1864, 1865, & 1866? If so, state such changes.

Ans. 9. I am not aware of any change. If there had been, I should have known it.

Int. 10. What was the outstanding bonds of the De' Moine' Navigation & Railroad Company worth during the years 1864 & 1865?

Ans. 10. I suppose in those years they would be worth what we paid in 1867, '8, & '9, which was from thirty to forty cents on the dollar, coupons included.

Int. 11. How were the bonds secured?

(Same objection as to interrogatory No. 7.)

Ans. 11. They were secured by mortgage on the lands owned by the company made in the year 1855.

Int. 12. What was the amount of bonds originally issued by the company, secured by the mortgage on the lands?

(Same objection as int. No. 7.)

Ans. 12. I do not know accurately; but my recollection of the amount given by the treasurer's report—given in 1858 or '59—is about four hundred thousand dollars.

Int. 13. Have any of these bonds been paid? If so, how?

(Same objection as to int. No. 7.)

Ans. 13. The bonds of the company were receivable as cash in payment for lands sold by the company during the years '58, '59, & '60. Nearly all the payments received for lands were in the bonds of the company.

Int. 14. What amount of bonds were outstanding against the company, to your knowledge, at any time since 1864?

Ans. 14. Of my personal knowledge I have only known of about fifteen thousand dollars, and of that amount there may be now out ten or twelve thousand dollars.

Cross-ex:

Int. 1. State if you have made any estimate of the value of the lands lying below the Raccoon Fork of the Des Moines River that
499 were owned by the company on the 1st day of January, 1864? If so, state the same.

Ans. 1. I believe I have answered this question in direct interrogatory.

Int. 2. State if you have made an estimate of the value of the lands belonging to or claimed by the N. & R. R. Company, on the first day of January, 1864, including the lands lying below the Rac'oon Fork of the Des Moines River, and the lands lying above said fork, which were outside the R. R. limits named in the grant to the State for R. R. purposes, in May, 1856; if so, state the amount.

Ans. 2. I have made an estimate of the lands owned and claimed by the company, in January, 1864, including those above and below Des Moines, and outside the disputed limits, and the aggregate value was about one hundred and forty-two thousand dollars, based on an average scale of six to eight dollars per acre.

Int. 3. State now whether you have made an estimate of all the lands owned by the company on the first of January, 1864, including those refer'ed to in the last interrogatory; and if so, state the same.

Ans. 3. I made an examination and find the company owned about fifty-four thousand acres, of land, which, at an average value of six dollars per acre, gives about three hundred and thirty thousand dollars, which I estimate as their value at that time.

Re-examination:

Int. 1. Were all these lands you have been testifying about a part of the lands known as Des Moines River improvement lands, granted by

Congress to the State in 1846, and by joint resolution of M'ch 2, 1861, the act of July 12, 1862?

Ans. They are the balance of the lands certified to the State by the General Government, and by the State deeded to the Des Moines Navigation and Railroad Company, in 1858, in pursuance of a settlement by said company with the State, and known as Des Moines River lands, certified under the act of August 8th, 1846.

Int. 2. How many acres of said lands above the mouth of the Rac'oon Fork of the Des Moines River had said navigation and railroad company sold, prior to June 1, 1864?

Answer. About one hundred and sixty-five to one hundred and sixty-eight thousand acres.

JOHN BROWNE.

STATE OF IOWA, *Polk County:*

The foregoing depositions have been taken before me this day, in the order as written, the witness John Browne being duly sworn before taking the same; also the same depositions read for him, and subscribed by him, and resworn—the att'y for plaintiff and def't appearing as stated in preface.

Given under my hand this 23d day of March, 1870.

[SEAL.] THOMAS CAVANAGH,
Notary Public, Polk County, Iowa.

(Endorsed as follows:) Deposition of John Browne. Read on the hearing and filed Oct. 19th, 1870. George B. Corkhill, clerk.

500 United States circuit court, district of Iowa.

JESSE WILLIAMS, COMPLAINANT IN CROSS-BILL,
vs.
WILLIAM BAKER, RESPONDENT.

To the above-named respondent, or to Finch & Rivers, his solicitors:

You are hereby notified that, on the 22 day of March, A. D. 1870, the above-named complainant will sue out a commission from the office of the clerk of the circuit court of the United States for the district of Iowa, directed to a commissioner to be named by the said clerk to take the deposition of Calvin Burr, of the city of New York, in the State of New York, upon written interrogatories, a copy of which is hereto annexed, and when so taken to be read in evidence on the trial of the above-entitled cause on behalf of the complainant. You can file cross-interrogatories if you think proper.

ISAAC COOK,
Sol. for Complainant.

HUBBARD & BELT,
Of Counsel.

Due and legar service admitted this 15th day of Feb'y, A. D. 1870, of the notice and interrogatories attached.

FINCH & RIVERS,
Sol's for W'm Baker.

In United States circuit court, district of Iowa.

JESSE WILLIAMS, COM. IN CROSS-BILL,
against
WILLIAM BAKER, RESPONDENT.

Interrogatories to be propounded to CALVIN BURR, of the city of New York, on the taking his deposition in the cause above-entitled, on the part of complainant in cross-bill.

Int. 1. State your name, age, place of residence, and occupation.

Int. 2. Do you know the parties to this suit, or either of them; if yea, how long have you known them?

Int. 3. Please state your business occupation for the ten years last past, and if you have been engaged in more than one kind of business state the same, and each kind of business, fully.

Int. 5. State whether or not your office, if you have one, and the office of Edwin C. Litchfield are in the same room; and if yea, how long have you officed together?

Int. 6. Are you now, or have you been, at any time during the ten years last past, connected with Edwin C. Litchfield in business, either as partner, or jointly interested with him in any business transactions? If you have been a partner of said Litchfield, state the length of time, the nature of the business, and whether now terminated; if you have been interested with said Litchfield in any business transactions, state the same fully.

Int. 7. Are you the same Calvin Burr interested as plaintiff in a cause entitled Calvin Burr against Des Moines Navigation and Railroad Company for a breach of covenant of warranty of a conveyance, made
501 to you by Des Moines Navigation and Railroad Company for sections nine and twenty-one, in township eighty-nine north, of range twenty-eight west, in Webster County, Iowa, and which cause was tried at the term, 1864, of the United States circuit court for the southern district of New York, and afterwards decided by the Supreme Court of the United States at the December term, 1866?

Int. 8. Have you ever been a stockholder or bondholder of the Des Moines Navigation and Railroad Company? If yea, please state a full account of all stocks and bonds ever owned by you, showing the date of acquiring the same, the amount at each time, the consideration paid for the same, and whether the consideration was paid in money, property, services, and if property or services, state the value of the same; and if you have disposed of any stocks or bonds of said company, state the time and amount, and what consideration you received for the same.

Int. 9. Have you ever been an officer of the Des Moines Navigation and Railroad Company? If yea, name the office, how long you held the same, and what salary you received, and whether paid in money, stock, bonds, or lands; and if you have held more than one office in said corporation, state fully, and what salaries you have received, and the time, &c., as above required.

Int. 10. Have you at any time been in the employ of the Des Moines Navigation and Railroad Company? If yea, state how long—in what capacity; what salary you received, and whether paid in money, stock, bonds or lands; and if paid in anything other than money, state fully what it was, and its value, and describe it fully.

Int. 11. Please give a descriptive list of all lands that the Des Moines

Navigation and Railroad Company has at any and all times conveyed to you, and state the consideration for each conveyance, and if the consideration was paid in anything other than money, describe it particularly, and state its value.

Int. 12. What lands do you now claim to own in the State of Iowa by virtue of deeds of conveyance from said Des Moines Navigation and Railroad Company? Please describe them.

Int. 13. State what consideration you paid to the Des Moines Navigation and Railroad Company for the premises in controversy in the suit mentioned in interrogatory No. seven, above; and, if you paid in anything other than money, state particularly what such consideration consisted of.

Int. 14. If you have not already, in your account of stocks and bonds, shown what stock and bonds of the Des Moines Navigation and Railroad Company you owned at the time of the commencement of the suit mentioned in interrogatory No. seven, above, please state the same now.

Int. 15. Were you acquainted with the financial condition and responsibility of the Des Moines Navigation and Railroad Company prior to the commencement of the suit mentioned in interrogatory seven, above? If yea, please state what it was, and particularly whether said company had any property or assets, other than its claim upon lands in Iowa above the mouth of the Raccoon Fork of the river Des Moines, granted by Congress to aid in the improvement of the navigation of said Des Moines River; and, if it had any other property or assets to your knowledge, please state of what it consisted, and its value.

Int. 16. State whether or not you did not know at the time of the commencement of the suit mentioned in interrogatory seven, that said company was insolvent, and had no property or assets save that mentioned in the last interrogatory?

502 Int. 17. State, if you know, any property or assets out of which you could have satisfied the judgment you prayed in the suit mentioned in interrogatory seven?

Int. 18. State whether or not, prior to the commencement of the suit mentioned in interrogatory seven, one Edwin C. Litchfield suggested the commencement of said suit, and agreed, or stated, that the said def't therein would pay the costs of the same?

Int. 19. Had you any conversation with said Edwin C. Litchfield, prior to the commencement of said suit, relative thereto? If yea, state the conversation fully, giving time and place.

Int. 20. State, if you know, whether Edwin C. Litchfield went to Washington prior to the commencement of said suit, and obtained the documentary proof introduced by you on the trial of the same?

Int. 21. Do you know who obtained and arranged the documentary proof offered by you on the trial of said cause? If so, please state.

Int. 22. State whether or not Edwin C. Litchfield prepared, or aided, or assisted to prepare, the argument before the Supreme Court of the United States in your behalf in said cause?

Int. 23. State whether any agreement or understanding was had between you and the Des Moines Navigation and Railroad Company, or any officer thereof, as to who should pay the costs of your said suit against said company? If so, state the agreement or understanding, who the same was made with, the time, and what it was.

Int. 24. Have you ever paid any or all the costs in said suit mentioned in interrogatory seven? If so, how much, and to whom did you pay the same?

Int. 25. Do you know, or can you set forth any other matter or thing

which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matter in question in this cause?

ISAAC COOK,
Sol. for Comp.

HUBBARD & BELT,
of Counsel.

(Endorsed as follows:) In the U. S. circuit court, dist. of Iowa. Jesse Williams, com. in cross bill, ag't William Baker, respondent. Interrogatories and notice to take dep. Calvin Burr. Read on the hearing. Filed Apr. 25, 1870. George B. Corkhill, clerk.

In the United States circuit court, district of Iowa.

JESSE WILLIAMS, COM. IN CROSS-BILL,
against
WILLIAM BAKER, RESPONDENT.

Interrogations propounded to CALVIN BURR, of the city of New York, on the taking of his deposition in the cause above entitled, on the part of complainant in cross-bill, with the answers thereunto.

Int. 1. State your name, age, place of residence, and occupation.

Answer to 1st int. My name is Calvin Burr; I am 78 years old; I live at 125 E. 23d st. in city of New York; was formerly a merchant.

Int. 2. Do you know the parties to this suit, or either of them; if yes, how long have you known them?

503 Ans. to 2d int. I have no recollection of the names of the parties to this suit.

Int. 3. Please state your business occupation for the ten years last past, and if you have been engaged in more than one kind of business state the same, and each kind of business, fully.

Ans. to 3 int. For the last ten years I have speculated in real estate, and sometimes in stocks.

Int. 5. State whether or not your office, if you have one, and the office of Edwin C. Litchfield, are in the same room; and if yes, how long have you officed together?

Ans. to 5 int. I have no office and have had no office. I am in Edwin C. Litchfield's office often, but have no desk there. This has been for more than ten years past.

Int. 6. Are you now, or have you been at any time, during the ten years last past, connected with Edwin C. Litchfield in business, either as a partner or jointly interested with him in any business transactions? If you have been a partner of said Litchfield, state the length of time, the nature of the business, and whether now terminated; if you have been interested with said Litchfield in any business transaction, state the same fully.

Ans. to 6 int. We have had a good many business transactions together. I don't recollect of any in which we were jointly interested. I was not in partnership with him. I had some Iowa lands, and I sold some Iowa lands to him, and have sold him stocks. The lands I sold him were some I took from the Des Moines Navigation and Railroad Company. He has guaranteed me against loss on *on* these lands received from this company, and to that extent our relations are not terminated, as he is to bear me out with them; I ought rather to say that I gave him the lands in consideration that he would give me a certain

writing to clear me from all responsibility of every kind, as a director and stockholder in the Des Moines Navigation and Railroad Company. The company stood in bad credit then, and we did not know but that we should lose all the land, but instead of that we have gained the land. I had advanced to the company about $3,000, and he was to pay me back that money besides the guarantee. The lands I sold him were above Des Moines City, the disputed district.

Int. 7. Are you the same Calvin Burr mentioned as plaintiff in the cause entitled Calvin Burr against Des Moines Navigation and Railroad Company, for a breach of covenant of warranty of conveyance made to you by the Des Moines Navigation and Railroad Company, for sections nine and twenty-one, in township eighty-nine north, of range twenty-eight west, in Webster County Iowa; and which cause was tried at the term 1864, of the United States circuit court for the southern district of New York, and afterwards decided by the Supreme Court of the United States at the December term, 1866?

Answer. I answer to the 7th interrogatory, yes, generally; but I cannot state particularly as to the dates mentioned or the number of the sections, as I have other lands there; but the lands were in the neighborhood of the sections named.

Int. 8. Have you ever been a stockholder or bondholder of the Des Moines Navigation and Railroad Company? If yes, please state a full account of all *of all* stock and bonds ever owned by you, showing the date of acquiring the same, the amount at each time, the consideration paid for the same, and whether the consideration was paid in money, property, services, and if in property or services, state the value
504 of the same; and if you have disposed of any stock or bonds of said company, state the amount, and what consideration you received for the same.

Answer. I have been a stock and bondholder of The Des Moines Navigation and Railroad Company. I cannot tell how much stock I ever owned or how many bonds I have owned. I do not keep a regular book of stocks or bonds I purchased. I cannot tell how much I have paid for the stocks or bonds. What I paid was in money. Nothing was paid in services. I cannot ascertain how much I have paid for stocks and bonds of this company. I never received anything for services.

Int. 9. Have you ever been an officer of The Des Moines Navigation and Railroad Company? If yea, name the office, how long you held the same, and what salary you received, and whether paid in money, stocks, bonds, or lands; and if you have held more than one office in said corporation, state fully, and what salaries you have received, and the time, &c., as above required.

Answer. I have been a director of the Des Moines Navigation and Railroad Company; held no other office; did not receive any salary.

Int. 10. Have you at any time been in the employ of The Des Moines Navigation and Railroad Company? If yea, state how long, in what capacity, what salary you received, and whether paid in money, stocks, bonds, or lands; and if paid in anything other than money, state fully what it was, and its value, and describe it fully.

Answer. I answer to the whole interrogatory, no; except as stated in my answer to the ninth interrogatory.

Int. 11. Please give a descriptive list of lands that The Des Moines Navigation and Railroad Company has at any time and all times conveyed to you, and state the consideration for each conveyance, and if

the consideration in anything other than money, describe it particularly and state its value.

Answer. The company conveyed to me the following lands: The south ½ of the southwest ¼, and the west ½ of the southeast ¼ of section 11, in township 75, range 19; also, the east ½ of the northwest ¼ of section 13, in township 75, rang' 19; also, the north ½ of the northeast ¼ of the northwest ¼ of section 15, in township 75, range 19; also, the east ½ of the southwest ¼ of section 31, in township 76, range 18; also, the north ½ of the southwest ¼ of section 25, in township 76, range 19; also, the northeast ¼, and the northeast ¼ of the southeast ¼ of section 29, in township 76, range 19; also, the northeast ¼ of section 33, in township 76, range 19; also, the north ½ of the northeast ¼ of section 35, in township 76, range 19. Making a total of one thousand acres. Consideration mentioned in conveyance, $6,176.

The east ½ of the southwest ¼ of section 31, in township 81, range 25, containing 80 acres. Consideration mentioned, $275 40.

The northwest ¼ of the southwest ¼ of 9, in township 74, range 16, containing 40 acres. Consideration mentioned in conveyance, $356 16.

The southeast ¼ of the northwest ¼ of section 29, in township 68, range 7, containing 40 acres. Consideration mentioned in conveyance, $219 30.

The southwest ¼ of the northeast ¼ of 25, in township 77, rang' 19, containing 40 acres. Consideration mentioned in conveyance, $271 36.

The northeast ¼ of the southeast ¼ of section 19, in township 76, rang' 19, containing 40 acres Consideration mentioned in conveyance, $400.

505 The northeast ¼ of the southwest ¼ of section 25, in township 78, range 22, containing 40 acres. Consideration mentioned in conveyance, $100.

The northeast ¼ of the northwest fractional ¼, containing 132 $\frac{6}{100}$ acres; and the southwest fractional ¼ containing 132 $\frac{98}{100}$ acres, of section seven, in township 76, range 20; also, the southeast ¼ of the northeast ¼, the south ½ of the southeast ¼ and the south ½ of the southwest ¼ of section 17, in township 76, range 20; also, the southeast ¼ of section 21, in township 76, range 20; also, the northeast ¼, the southeast ¼, the south ½ of the southwest ¼, and the northeast ¼ of the southwest ¼ of section 23, in township 76, range 20; also, the northeast ¼ of the southeast ¼ of section 25, in township 76, range 20; also, the north ½ of the northeast ¼, the northeast ¼ of the northwest ¼, the southwest ¼ of the northwest ¼ of section 27, in township 76, range 20. Making a total, 1,425 $\frac{4}{100}$ acres. Consideration mentioned in conveyance, $128 26.

The east ½ of the northeast ¼, and the northwest ¼ of the northwest ¼ of section 11, in township 74, range 18; also, the west ½ of the northeast ¼, and the southeast ¼ of section 19, in township 75, range 18; also, the southwest ¼ of the southwest ¼, and the northeast ¼ of the southwest ¼ of section 27, in township 75, range 18; also, the south half of the southwest ¼, and the south ½ of the southeast ¼ of section 29, in township 75, range 18; also, the northeast ¼, the southwest ¼, and the northwest ¼ of the northwest ¼ of section 33, in township 75, range 18; also, the south ½ of the northwest ¼ and the northeast ¼ of the southwest ¼ of section 1, in township 75, range 19. Making a total of 880 acres. Consideration mentioned in conveyance, $4,416.

The west ½ of the southwest ¼, the southeast ¼ of the northeast ¼, and the northeast ¼ of the southeast ¼ of section 27, in township 76, range

20; also, the northeast ¼, *of* the north ½ of the southeast ¼, and the southeast ¼ of the southeast ¼, the southwest ¼, the south ½ of the northwest ¼, and the notheast ¼ of the northwest ¼ of section 11, in township 76, range 21; also, the northeast ¼ of the northeast ¼, and the northeast ¼ of the northwest ¼, and the southeast ¼ of the southwest ¼ of section 13, in township 76, rang' 21; also, the north ½ of the northeast ¼ of the northwest ¼ of section 25, in township 76, range 21; also, the northwest ¼ of the northeast ¼, and the north fractional ½ of the northwest ¼, containing $69\frac{60}{100}$ acres. Making a total of $1{,}000\frac{60}{100}$ acres. Consideration mentioned in conveyance, $5,582 50.

The southeast ¼, the southeast ¼ of the southwest ¼, and the west ½ of the southwest ¼ of section 29, in township 78, range 21; also, the southeast ¼ of the southwest ¼, the northeast ¼ of the southwest ¼, the southwest of the southwest ¼, the southeast ½ of the southeast ¼, and the southeast ¼ of the northeast ¼ of section 33, in township 78, range 25. Making a total of 520 acres. Consideration mentioned in conveyance, $4,992.

The east ½ of the southwest ¼, the east ½ of the S. E. ¼, and the southwest ¼ of the southeast ¼ of section 11, in township 74, range 17; also, the southwest fractional ¼, containing $157\frac{29}{100}$ acres, the east ½ of the northwest ¼, the northeast ¼ of the northeast ¼, the northeast ¼ of the southeast ¼, and the northwest ¼ of the northeast ¼ of section 19, in township 74, range 17; also, the northwest ¼ of *of* section 27, in township 74, range 17; and the north ½ of the northeast ¼ of section 35, in township 74, range 17. Making a total of $797\frac{25}{100}$ acres. Consideration mentioned in conveyance, $4,644 60.

506 The south ½ of the northeast ¼ of section 35, in township 77, range 21, being 80 acres. Consideration mentioned in conveyance $100.

The northeast ¼ of the southwest ¼ of section 17, in township 76, range 19, containing 40 acres. Consideration mentioned in conveyance 212 40.

The north half of the southeast ¼ of section 29, in township 76, range 20; also, the west ½ of the southeast ¼ of the north fractional ½ of the northwest ¼, containing $62\frac{9}{100}$ acres. The southwest ¼, and the southwest ¼ of the northwest ¼ of section 3, in township 77, range 20; also, the east ½ of the northeast ¼, and the northeast ¼ of the southeast ¼ of section 7, in township 77, range 20; also, the southeast ¼ of the southwest ¼ of section 23, in township 77, range 21; also, the west ½ of the southwest ¼ of section 27, in township 77, range 21; also, the west ½ of the northwest ¼ of section 33, in township 77, range 21; also the northwest ¼ of the northeast ¼, the northeast ¼ of the northwest ¼, the west ½ of the southeast ¼, and the northeast ¼ of the southeast ¼, and the northeast ¼ of the southwest ¼ of section 35, in township 77, range 21; making a total of $982\frac{9}{100}$ acres. Consideration mentioned in conveyance, $5,354 03.

The southwest fractional ¼ of the southwest ¼ of section 7, in township 74, range 17, contain'g $38\frac{49}{100}$. Consideration mentioned in conveyance, $100.

Land in Humbold' Co., being $496\frac{5}{100}$ acres; land in Boone Co., being 420 acres; all of section 21, township 89, range 28, being 640 acres; all of section 9, township 89, range 28, being 640 acres, for which I paid over $17,000.

These are the lands referred to in interrogatory 7, and on which the suit against the Des Moines Navigation and Railroad Company was based. I paid for the lands on which the suit was based, in bonds and

stocks of the company. I cannot recollect whether I paid for the others in money or in bonds and stocks. I did not pay for any of them in services. The amount of consideration money mentioned in the conveyances is correct, *be*, I suppose, the amounts were generally paid for in bonds and stocks of the company.

Int. 12. What lands do you now claim to own in the State of Iowa, by virtue of deeds of conveyance from said Des Moines Navigation and Railroad Company? Please describe them.

Answer. I did own the lands mentioned and described in answer to int. 11, conveyed to me by the Des Moines Navigation and Railroad Company, but I have disposed of all of said lands except about 1,360 acres lying below Des Moines.

Int. 13. State what consideration you paid to the Des Moines Navigation and Railroad Company, for the premises in controversy in the suit mentioned in interrogatory No. seven, above; and if you paid anything other than money, state particularly what such consideration consi'ted of.

Answer. I paid for land referred to in interrogatory seven—over seventeen thousand dollars, but the exact amount I cannot state; I paid for it in bonds and stocks.

Int. 14. If you have not already in your account of stocks and bonds, shown what stocks and bonds of the Des Moines Navigation and Railroad Company, you owned at the time of the commencement of the suit mentioned in interrogatory No. seven above, please state the same now.

Answer. I do not think I owned any stocks or bonds of the company at that time, as I had converted them all into lands.

507 Int. 15. Were you acquainted with the financial condition and responsibility of the Des Moines Navigation and Railroad Company, prior to the commencement of the suit mentioned in interrogatory seven above; please state what it was, and particularly whether said company had any property or assets other than its claims upon lands in Iowa, above the mouth of the Raccoon Fork of the river Des Moines, granted by Congress to *the* in the improvement of the navigation of the said Des Moines River; and if it had any other property or assets, to your knowledge, please state of what it consisted, and its value.

Answer. I think I had a general knowledge of the financial condition of the Des Moines Navigation and Railroad Company. There was money paid in, in the first purchase. I was not in the company when the money was paid in. I do not think I ever examined the books to ascertain what the assets were. There were reports made, but I don't recollect them. As a director, I do not think I ever examined the books to see if those reports were correct or not. So many years have passed since then, I do not recollect about them. I don't know that the company is insolvent, but their stock is not worth much. I do not know of any assets the company has other than these lands granted by Congress to them to aid in the improvement of the navigation of the Des Moines River.

Int. 16. State whether or not you did not know, at the time of the commencement of the suit mentioned in interrogatory seven, that said company was insolvent, and had no property or assets save that mentioned in the last interrogatory.

Answer. I did not know that the company, at the time I commenced my suit, had any other property than the lands granted by Congress.

The company was insolvent so far as regarded any other means by which to pay their indebtedness except the lands granted by Congress.

Int. 17. State if you knew any other property or assets out of which you could have satisfied the judgment you prayed for in the suit mentioned in interrogatory seven.

Answer. I did not, other than the lands mentioned.

Int. 18. State whether or not, prior to the commencement of the suit mentioned in interrogatory seven, one Edwin C. Litchfield suggested the commencement of said suit, and agreed or stated that the said def't therein would pay the cost of the same.

Answer. I answer, yes, to the question generally.

Int. 19. Had you any conversation with said Edwin C. Litchfield, prior to the commencement of said suit relative thereto; if yea, state the conversation fully, giving time and place.

Answer. I had conversations with him, Edwin C. Litchfield, prior to the commencement of said suit and relative thereto, but I cannot give the time or place or exact conversation.

Int. 20. State whether you know whether Edwin C. Litchfield went to Washington, prior to the commencement of said suit, and obtained the documentary proof introduced by you on the trial of the same.

Answer. He went to Washington a number of times in relation to the business of the company, but I cannot say whether or not he procured the documentary proof introduced by me on the trial.

Int. 21. Do you know who obtained and arranged the documentary proof offered by you on the trial of said cause? If so, please state.

Answer. I do not know whether it was done by Litchfield or the lawyer.

Int. 22. State whether or not Edwin C. Litchfield prepared, or
508 aided, or assisted to prepare the argument before the Supreme Court of the United States in your behalf in said cause.

Answer. I cannot answer the question, as I have no knowledge on the subject. If he did it, he did it with his lawyer, as I did not take much interest in it, as I was guaranteed against loss, and that was the lawyer's business.

Int. 23. State whether any agreement or understanding was had between you and The Des Moines Navigation and Railroad Company, or any officer thereof, as to who should pay the costs of your said suit against said company; if so, state the agreement or understanding, who the same was made with, the time, and what it was.

Answer. There was an agreement with Litchfield, he representing the company. It was a verbal one. I afterward had a bill sent to me for the costs, but I never paid it, and do not know who paid it.

Int. 24. Have you ever paid any or all the costs in said suit mentioned in interrogatory seven; if so, how much, and to whom did you pay it?

Answer. I have answered that question in answer to interrogatory No. 23.

I wish to correct my several answers in regard to the suit brought by me against the company. On reflection, I would state that these conversations took place prior to the first suit brought by me against the company. The suit mentioned in interrogatory seven was the second suit. Both suits were to try the title to the property. I had the same understanding in regard to the second suit with the company, but not with Mr. Litchfield personally, as he was in Europe at the time.

Int. 25. Do you know, or can you set forth, any other matter or thing

which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matter in question in this cause?

Answer. I know of nothing else.

CALVIN BURR.

Subscribed and sworn to before me this 19th day of April, 1870, in the city of New York.

W'M MACKELLAR,
Commissioner.

(Endorsed as follows:) Circuit court of the United States, dist. of Iowa. Jesse C. Williams, pl'ff, against W'm Baker, def't. Examination of Calvin Burr, in the city of New York, read on the hearing and filed Oct. 19th, 1870. George B. Corkhill, clerk.

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To William MacKeller, esq'r., No. 3 Tryon Row, New York, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine Calvin Burr, on his corporal oath, as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein Jesse C. Williams is plaintiff, and William Baker is defendent, on the part of the pl'ff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that, at certain days and places to be appointed by you for the
509 purpose, you do cause the said Calvin Burr to come before , and then and there examine him on oath upon the said interrogatories.

That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness, and the same to be subscribed by him and duly sworn to before you. That you take said deposition in accordance with you' certificate, which you will attach to the deposition of each seperate witness, stating that it was subscribed and sworn to by said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogation hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope thus directed the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 22 day of March, 1870, and in the ninety-fourth year of the independence of the United States of America.

Attest:

GEORGE B. CORKHILL.

Dedimus potestatem.

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To J. Thomas Spriggs, Utica, New York, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine Samuel G. Wolcott, on his corporal oath, as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein Jesse C. Williams is plaintiff, and William Baker is defendant, on the part of the pl'ff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said Samuel G. Wolcott to come before you, and then and there examine him on oath upon the said interrogatories.

That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witness, and the same to be subscribed by him, and duly sworn to before you; that you take said deposition, in accordance with your certificate which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness, at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court, at Des Moines, Iowa; that you
510 endorse on the outside of said envelope thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

{SEAL OF THE CIRCUIT COURT OF THE U. S. DISTRICT OF IOWA.} Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 22d day of March, 1870, and in the ninety-fifth year of the independence of the United States of America.

Attest:

GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded, (whether written or oral,) to be written out and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reason be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

United States circuit court, district of Iowa.

JESSE WILLIAMS, COMPLAINANT IN CROSS-BILL,
vs.
WILLIAM BAKER, RESPONDENT.

On this eleventh day of May, A. D. 1870, personally appeared before me, the undersigned, SAMUEL G. WOLCOTT, the witness in the annexed commission named, to me personally known, and being by me duly sworn, did make answer to the said several interrogatories as hereinbefore appears. To the first interrogatory, viz:

Int. 1st. State your name, age, place of business, and occupation.

He said: My name is Samuel G. Wolcott; aged 50 years; and reside in Utica, N. Y.; and by profession am a surgeon.

To the second interrogatory, viz: Int. 2d. Do you know the parties to this suit; if yea, how long have you known them?

He said: I do not know either of the parties to the suit.

To the third interrogatory, viz: Int. 3d. State who was the president of the Des Moines Navigation and Railroad Company during the year A. D. 1845.

He said: I cannot say positively, but think it was Edwin C. Litchfield.

To the fourth interrogatory, viz: Int. 4th. Are you acquainted with Edwin C. Litchfield, of New York City? Is he a relative of yours, either by consanguinity or marriage; and if either, how are you related to him?

He said: I am acquainted with Edwin C. Litchfield, and related to him by marriage?

To the fifth interrogatory, viz: Int. 5th. Are you the Samuel G. Wolcott named as the plaintiff in the case of Samuel G. Wolcott
511 against The Des Moines Navigation and Railroad Company, tried at the October term, A. D. 1865, of the circuit court of the United States for the southern dist. of New York, for the breach of the covenants of the deed for the east half of section seventeen, in township eighty-eight north, of range twenty-seven west of the fifth principal meridian, in Webster County, Iowa, & which case was carried to the Supreme Court of the United States, and decided at the December term, A. D. 1866?

He said: I am the Samuel G. Wolcott named as the pl'ff in the case of Samuel G. Wolcott against The Des Moines Navigation and Railroad Company, tried Oct., 1865, in above interrogatory referred to.

To the sixth interrogatory, viz: Int. 6. Have you ever owned any of the stock or bonds of the Des Moin's Navigation and Railroad Company? If so, state an account of any and all stock owned by you, showing the date of acquiring and disposing of the same, the amount now owned, and also showing the price paid for such stock or bonds, or either or both, and whether you paid the same in money property or services; state fully.

To the seventh interrogatory, viz: Int. 7. Please give a list, descriptive of all lands in the State of Iowa, conveyed to you at any time (and state the time or times) by the Des Moines Navigation and Railroad Company, and state whether you still own the same, and if not, state what part of the same you have disposed of?

He said: I cannot give a description of lands conveyed to me by the Des Moines Navigation and Railroad Company. I think I own in all about twenty-five hundred acres. Never have disposed of any of the

land conveyed to me. I own all lands at this date ever conveyed to me by said company.

To the eighth interrogatory, viz: Int. 8. State what consideration you paid the Des Moines Navigation & Railroad Co. for any and all lands in the State of Iowa conveyed to you by said company, and what said consideration consists of; whether money, services, property, or bonds of said company; state the amount.

He said: The price paid has varied from three dollars to ten dollars, and the consideration has been for the most part cash; have exchanged bonds for land, but paid cash for bonds.

To the ninth interrogatory, viz: Int. 9. At whose instance or suggestion was the suit mentioned in the 5th above interrogatory commenced and prosecuted?

He said; It was brought upon consultation with other members of the family interested with me in these lands belonging to said co. I mean relatives of my wife's family.

To the tenth interrogatory, viz: Int. 10th. Prior to the commencement of the suit mentioned in the 5th above interrogatory, had you had any conversation with Edwin C. Litchfield, president of said navigation and railroad company, about the prosecution of such a suit? And if so, state fully what was said both by you and by said Litchfield; and state where you were and the time, and particularly state what was said, if anything, as to whether said Litchfield or the Des Moines Navigation and Railroad Company would or ought to pay the costs of such suit.

He said: I did have conversation with Edwin C. Litchfield, president of said company about the commencement of said suit. I cannot state what was said between him and me in regard to it, but have no recollection of anything being said by Mr. Litchfield about payment of the cost of the suit either by him or the Des Moine' Co.

512 To the eleventh interrogatory, viz: Int. 11th. Did you have any conversation with any officer of said company relative to the matters contained in the last interrogatory? If so, state the same fully.

He said: I had no conversation with any officer of the company, except John Stryker, who was one of the members of the family referred to in my answer to the ninth interrogatory.

To the twelfth interrogatory, viz: Int. 12th. Did you have any written correspondence with Edwin C. Litchfield or any other officer of said company, prior to the commencement of said suit mentioned in interrogatory 5th, relating thereto or in any way relating to the lands in controversy in said suit? If so, please append the same or copies to your answer hereto.

He said: I had written correspondence with Edwin C. Litchfield prior to the commencement of said suit relating thereto. I do not know what became of said correspondence. I cannot append the same or copies thereto.

To the thirteenth interrogatory, viz: Int. 13th. State whether you have, at any time, paid the costs or any part of the same of said suit mentioned in the 5th interrogatory; and state whether you have any voucher for costs paid, and append the same or copies to your answer:

He said: I have paid cost, but have no vouchers for the same. Paid, I suppose, all the costs; cannot state amount.

To the fourteenth interrogatory, viz: Int. 14th. If you answer that you have paid the costs or any part thereof in the suit mentioned in interrogatory 5th, state whether you paid the same with your own means, or whether some other person furnished them, and who.

He said: I paid with my own means; no other person furnished means for that purpose.

To the fifteenth interrogatory, viz: Int. 15. Were you acquainted, either personally or by report, with the financial condition and responsibility of the Des Moines Navigation and Railroad Company during the year 1865, and prior to the commencement of the suit mentioned in the 5th interrogatory? If so, state its condition as to solvency.

He said: I had no particular acquaintance with the financial condition of the company, but supposed it to be good and solvent.

To the sixteenth interrogatory, viz: Int. 16. State whether, in 1865, the Des Moines Navigation and Railroad Company had any assetts, to your knowledge, except the claim to the lands supposed to have been granted by the Congress of the United States to the State of Iowa, above the mouth of the Raccoon Forks, for the improvements of the navigation of the Des Moines River. If said company had any assetts save these lands, please state of what such assets consisted.

He said: I have no knowledge of the financial condition of the company or its assets, and had none at that time.

To the seventeenth interrogatory, viz: Int. 17. Do you know or can you set forth any other matter or thing which may be a benifit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If so, set forth the same fully and at large, in your answer.

He said: I know of nothing that can be of any benifit or advantage to either of the parties at issue in this cause.

Subscribed and sworn before me this 11th day of May, 1870.

J. THOMAS SPRIGS,
Utica, N. Y.

513 CITY OF UTICA,
Oneida County, ss:

I, J. Thomas Sprigs, the person named in the foregoing commission, do certify that, on the eleventh day of May, A. D. 1870, at Utica, N. Y., personally appeared before me Samuel G. Wolcott, the witness in said commission named, and that he did, there and then, and in my presence, make answer to the several foregoing interrogatories, as appear by the answers thereto, and that the same was, at the time and place therein mentioned, subscribed and sworn to by said deponent, Samuel G. Wolcott, the same having been read over by me to said Wolcott before he subscribed the same.

Dated May 11, 1870.

J. THO'S SPRIGGS.

(Endorsed:) Read on the hearing and filed Oct. 19th, 1870. George B. Corkhill, clerk.

Depositions of a witness produced, sworn, and examined in pursuance of the annexed stipulation in the county of Boone, and State of Iowa, before me, H. R. Nelson, clerk of the district court of Iowa, in and for the county of Boone, in a certain action now pending in the U. S. circuit court, district of Iowa, wherein William Baker, is plaintiff, against Jesse Williams, as defendant, on the part of said defendent.

JESSE WILLIAMS, of lawful age, being produced, sworn, and examined on the part of the defendant, deposes as follows:

Interrogatory 1st. What is your name, age, residence, and business?

Answer 1st. Jesse Williams; age, 42 years; Boone County, Iowa; farming.

Int. 2. What relation, if any, do you sustain to this suit?

Ans. 2. I am defendent in it.

Int. 3rd. Are you acquainted with William Baker, the opposing party in this suit?

Ans. 3rd. Am not; never saw him.

Int. 4th. On what legal subdivision of the U. S. surveys do you reside, and how long have you resided thereon?

Ans. 4th. Live on the N. W. ¼ of section 24, township No. 83, of range 27 W. 5 P. M., Iowa. I have lived thereon for nineteen years, the sixth of last April.

Int. 5. If you have answered that you reside on the N. E. ¼ of section 23, T. 83, R. 27 W., of the 5th prin. mer. in Boone County, Iowa, state whether same is improved; and if yea, how improved, and who, if you know, made the improvement?

Ans. 5. I do not live on the N. E. ¼ of sect. 23, 83, R. 27 west of 5 P. M., Boone County, Iowa, but on the land described in the 4th interrogatory. The N. E. ¼ of sect. 23, T. 83, R. 27, is improved; has about ninety acres in cultivation and fenced on two sides by myself; on the other sides I joined fences with my neighbors; the improvements were made by myself. The fence on the east side belongs to me but is on another tract of land.

Int. 6. Are you acquainted with the value of said quarter section without the improvements, and with the value of the improvements thereon? If yea, state the same separately and fully,

Ans. 6. I am; I think it worth twelve dollars per acre, without the improvements. I think the improvements on the land are worth from eight hundred to one thousand dollars.

514 On cross-examination the witness testified as follows:

Cross-int. 1. If in answer to direct int. 5, you state that the N. E. ¼ of sect. 23, town. 83, R. 27 west, is improved; then state how much and what parts and portions thereof are improved, by whom such improvements were made; when, and in what years, and what those improvements are, and in what they consist, and the nature and extent thereof.

Ans. to 1 cross-int. There are about ninety acres broke and in cultivation; the whole S. E. 40 acres is broke and in cultivation, except a very small piece; a portion of the S. W. 40 acres is broke and in cultivation; I do not know the number of acres; a portion of the N. W. 40 acres is broke, and in cultivation, I think, about 35 acres; a portion of the N. E. 40 acres is broke and in cultivation; I do not know the number of acres. There is a ½ mile of good fence on the west line, and also a ½ mile of good fence on the south line; the other sides are fenced by fences on other tracts of land; all the improvements were made by me; I improved a portion of the S. E. 40 acres in the year 1853, the balance of the S. E. 40 acres, and a portion of the S. W. 40 acres, I broke and put into cultivation in 1867; all the balance was broke for cultivation in 1867; the improvements consist in breaking the sod and fencing two sides of the land, about ninety acres of breaking and one mile of fence.

Cross-int. 2. State whether or not you ever paid any taxes on said tract until after the commencement of this suit (William Baker vs. Jesse Williams) in dist. court, Boone Co., Iowa; and if you answer that you did, then state for what year or years.

Answer second. I have paid taxes before the commencement of the suit; I have paid taxes for 1865, 1866, & 1867, before the co mmence ment of the suit, and all the taxes for 1868 & 1869.

Third. State whether or not at the time you entered into occupation of the said tract you had any knowledge or notice that the same belonged to the De' Moine' Navigation & Railroad Co., or some one of its grantees, or that the same was river land, so called.

Answer third. In 1853, when I first entered into the occupation of the land, I did know that there was any parties claiming the land, and had no notice that it belonged to any one. I thought that it was Government land; when I bought of the R. R. Co. I had heard that it was river land, so called.

JESSE his + mark. WILLIAMS.

Witnessed by—
OLIVER LOGAN.

Subscribed in my presence, and sworn to, by Jesse Williams, before me, this 22nd day of September, A. D. 1870.

H. R. WILSON, *Clerk*.

STATE OF IOWA, *Boone County, ss:*

I, H. R. Wilson, clerk of the district court of Iowa in and for said county, do hereby certify that, in pursuance of the annexed stipulation to me directed, I caused to come before me, at my office in Boonsboro, Boone County, Iowa, Jesse Williams, on the 22nd day of September, A. D. 1870, who was then and there by me sworn and examined, and such examination reduced to writing by me, and after being by me read over to said Jesse Williams, the same was subscribed and sworn to by him in my presence, and his depositions are now herewith returned.

515 And I further certify that neither of the parties, (except the witness,) nor the agent or attorney of either, was present during the examination of the said witness; that the signature of said witness was made by mark, duly witnessed by an uninterested party.

In testimeny I have hereunto set my hand and affix the seal of said court, in Boonsboro, this 22nd day of September, A. D. 1870.

[SEAL.] H. R. WILSON, *Clerk*.

In the United States circuit court, district of Iowa.

WILLIAM BAKER, COMPLAINANT, *v.* JESSE WILLIAMS, RESPONDENT. } Original bill in equity.

JESSE WILLIAMS, COMPLAINANT, *v.* WILLIAM BAKER, RESPONDENT. } Cross bill in equity.

It is hereby stipulated and agreed that the deposition of Jesse Williams, of Boone County, Iowa, may be taken before the clerk of the district court of said Boone County on the annexed interrogatories, and read in evidence upon the trial of the above-entitled action, the same as if it had been taken upon commission regularly issued; and the issuance of a commission is hereby waived; the deposition, when completed,

to be returned by the said clerk to Geo. B. Corkhill, clerk of the U. S. circuit court at Des Moines, Iowa, 14 Sept., 1870.

ISAAC COOK &
PLATT SMITH,
Solicitors for Williams.

We assent to and sign the above stipulation with this condition, that, after the word "interrogatories," at the end of the seventh line from bottom of page one thereof, there be inserted the words "and cross-interrogatories;" and, on the further condition, that the said W'm Baker, whom we represent, shall be at liberty at any time before or at the trial to except to any of the direct interrogatories to said Jesse Williams, or the answers thereto, for any matter either of form or substance.

Sept. 19, 1870.

FINCH & RIVERS,
Sol'rs for W'm Baker.

Interrogatories to be propounder to said witness Jesse Williams.

Int. 1. What is your name, age, residence, and business?

Int. 2. What relation, if any, do you sustain to this suit?

Int. 3. Are you acquainted with William Baker, the opposing party to this suit?

In'. 4. On what legal subdivision of the U. S. surveys do you reside, and how long have you resided thereon?

Int. 5. If you have answered that on the N. E. ¼ of sec. 23, T. 88, R. 27 W. of the 5th prin. mer., in Boone County, Iowa, state whether the same is improved; and if yea, how improved, and who, if you know, made the improvements.

Int. 6. Are you acquainted with the value of said quarter section without the improvements, and with the value of the improvements thereon? If yea, state the same separately and fully.

ISAAC COOK &
PLATT SMITH,
Sol'c'rs for Williams.

516 Cross-interrogatories:

First. If, in answer to direct int. 5, you state that the N. E. q'r of sec. 23, town. 83, R. 27 west, is improved, then state how much and what parts or portions thereof are improved, by whom such improvements were made, & in what years, and what those improvements are, and in what they consist, and the nature & extent thereof.

Second. State whether or not you ever paid any taxes on the said tract until after the commencement of this suit (W'm Baker vs. Jesse Williams) in dist. court, Boone Co., Iowa; and if you answer that you did, then state for what year or years.

Third. State whether or not at the time you entered into occupation of the said tract you had any knowledge or notice that the same belonged to The De' Moine' Navigation and Railroad Co. or some one of its grantees, or that the same was river land, so called.

FINCH & RIVERS,
Sol'rs for Baker.

(Endorsed as follows:) Deposition of Jesse Williams. Read on the hearing, and filed Oct. 19th, 1870. George B. Corkhill, clerk.

In the circuit court.

U. S. OF AMERICA, *State of Iowa:*

W'M BAKER, PL'FF,
v.
JESSE WILLIAMS, D'F'T. } Original bill in equity.

JESSE WILLIAMS, PL'FF,
vs.
W'M BAKER, D'F'T. } Cross-bill in equity.

It is stipulated and agreed that the deposition of W. W. Walker, of Cedar Rapids, in the State of Iowa, may be taken before any notary public of Iowa within and for Linn County, residing and having his office at the town of said Cedar Rapids, on the annexed interrogatories, and read in evidence upon the trial of the above-entitled action, the same as if taken upon a commission regularly issued, and the issuance of a commission is hereby waived, the deposition when completed to be returned by said notary public to Geo. B. Corkhill, clerk of the United States circuit court, at Des Moines, Iowa.

13th Sept., 1870.

ISAAC COOK, PLATT SMITH,
Solicitors for Williams.

We sign and assent to the above stipulation on condition that, after the word "interrogatories," on fifth line from bottom, on first page, there be inserted the words "and cross-interrogatories;" and on the further condition and understanding that the said W'm Baker reserves all objections to the said direct interrogatories to said W'm W. Walker, whether to the form or substance thereof.

Sept. 20th, 1870.

FINCH & RIVERS,
Sol'rs for W'm Baker.

517 Interrogatories to be propounded to the witness, W. W. Walker:

Int. 1. What is your name, age, residence, and place of business?

Int. 2. Are you acquainted with the parties to this suit?

Int. 3. Are you acquainted with the Cedar Rapids & Missouri River Railroad?

Int. 4. Did you sustain any relation to the construction of said road; if so, what and when?

Int. 5. State when the construction of said road commenced, and when it was completed, both to intermediate points and throughout, as far as you know.

Int. 6. Do you know the cost of said railroad from Cedar Rapids to the Missouri River? If yea, state the same fully.

Int. 7. Are you acquainted with the location and quantity of the lands in Iowa granted by Congress to aid in the construction of the Iowa Central Air-Line Railroad, and which were subsequently resumed by the general assembly of Iowa, and conferred upon said Cedar Rapids and Missouri River Railroad Company? If yea, state the whole quantity of the said lands lying between the Mississippi River and a point five miles west of the Des Moines River.

Int. 8. State whether the Cedar Rapids and Missouri River Railroad

Company did, at any time, release to the State of Iowa any portion of said land grant lying within five miles of the Des Moines River, for the purpose of making good the title of actual purchasers from the said State; if so, how many lands were so released, and for what consideration?

Int. 9. Do you know of anything else of benefit or advantage to either of the parties to this suit? If yea, state the same fully and particularly, as though you were thereunto specially interrogated.

ISAAC COOK, & PLATT SMITH,
Sol'c'rs for Williams.

The said W'm Baker objects to each and every of the foregoing direct interrogatories to W. W. Walker, and excepts to the same for the reason that they are immaterial and irrelevant, and are in no way pertinent to the real issues to be tried herein.

The said W'm Baker also objects and excepts to said direct interrogatories numbered 5, 6, 7, & 8, for the further reason that there is better evidence of the facts sought to be proved by said interrogatories, and that the said interrogatories call for secondary evidence of the facts sought to be established by the answers to said interrogatories; that the facts sought to be proved by said interrogatories can be better proved by the books & records of the said railroad co., and by the records kept by the State of Iowa and its officials, and by the records of the Commissioner of the Gen'l Land Office, at Washington, and that those records are the proper and primary evidence rather than the statements or information of the witness.

To the 7th interrogatory to said Walker above, said Baker objects and excepts, for the reason that the interrogatory calls for secondary evidence. The quality or amount of lands granted to the State of Iowa, and lying between the Mississippi River and a point five miles west of the Des Moines River, can be shown by the patents or certified lists thereof, and such patents or lists are the best evidence. And the interrogatory calls for the contents thereof.

To the 8th interrogatory above to said W. W. Walker, *to* said
518 W'm Baker objects and excepts, for the reason that the interrogatory calls for the evidence of the contents of a written instrument claimed to be a release; that the paper itself is the best evidence of what it is, and the best evidence of the quality of lands contained in and covered by it, and the consideration and purpose for which it was , and the fact sought to be established can only be legally proved by the production of the instrument in said interrogatory, called a release.

Sept. 20, 1870.

FINCH & RIVERS,
Sol'rs for W'm Baker.

The said W'm Baker, insisting upon each and every of his objections to the direct interrogatories above stated and set forth, and waiving none of the said exception thereto, propounds the following cross-interrogatories:

First. State whether or not, during the years 1858, 1859, and 1860, or either of those years, you were one of the officers of The Cedar Rapids & Missouri River Railroad Company; and if so, what office you held, and during what years you held such office.

Second. State whether or not, while you were an officer of said company, and before the act of the general assembly of the State of Iowa

resuming said lands, as indicated in 7th direct interrogatory, you had any knowledge, or notice, or information that the lands lying in the odd-numbered sections, within five miles of the Des Moines River, in the county of Boone, held by the State of Iowa, been granted and conveyed to The De' Moine' Navigation and Railroad Company.

Third. State whether or not, during the time the bill for the resumption of the lands granted to the State for the construction of the Iowa Central Air-Line Railroad was pending before the general assembly of the State of Iowa, you made efforts and took an active part in procuring the passage of the said bill.

FINCH & RIVERS,
Sol'rs for Baker.

In the circuit court.

U. S. OF AMERICA, *State of Iowa:*

W'M BAKER, PL'FF,
vs.
JESSE WILLIAMS, DEF'T. } Original bill in equity.

JESSE WILLIAMS, PL'FF,
vs.
W'M BAKER, D'F'T. } Cross-bill in equity.

On this fourteenth day of October, A. D. 1870, personally appeared before me, Cha's H. Clark, a notary public of Iowa, in and for Linn County, residing at Cedar Rapids therein, W. W. WALKER, the witness in the annexed stipulation named, to me personally known, and, being by me duly sworn, did make answer to the said several interrogatories as herein below set forth.

Int. 1. What is your name, age, residence, and business?

Ans. W. W. Walker; Cedar Rapids, Linn Co., Iowa; age, 36; and business, civil engineer.

519 Int. 2. Are you acquainted with the parties to this suit?

Ans. Know Jesse Williams; do not know W'm Baker.

Int. 3. Are you acquainted with the Cedar Rapids & Missouri River Railroad?

Ans. Yes.

Int. 4. Did you sustain any relation to the construction of said road; if so, what and when?

Ans. Yes; have been chief engineer since June, 1860, and, as chief engineer, have had general charge of the construction of the whole line—all the work except some of the engineering having been done from 1861 to 1867.

Int. 5. State when the construction of said road commenced, and when it was completed, both to intermediate points and throughout, as far as you know.

Ans. The construction of the road was commenced in January, 1861; 40 miles, to Chelsea, was finished in November, 1861; 69 miles, to Marshall, were finished early in 1863; 100 miles, to Nevada, in 1864; 122 miles, to Boone, in May, 1865; and the whole line, 271.6 miles, to the Missouri River, in February, 1867.

Int. 6. Do you know the cost of the said railroad from Cedar Rapids to the Missouri River? If yea, state the same fully.

Ans. The said road cost the company about $41,270 00 per mile, or for the whole distance, $11,209,000 00.

Int. 7. Are you acquainted with the location and quantity of the land in Iowa granted by Congress to aid in the construction of the Iowa Central Air-Line Railroad, and which were subsequently resumed by the general assembly of Iowa, and conferred upon said Cedar Rapids & Missouri River Railroad Company? If yea, state the whole quantity of said lands lying between the Mississippi River and a point five miles west of the Des Moines River.

Ans. I am. The whole quantity of said lands between the Mississippi River and 5 miles west of the Des Moines River is 146,000 acres.

Int. 8. State whether the Cedar Rapids and Missouri River Railroad Company did at any time release to the State of Iowa any portion of said land grant lying within five miles of the Des Moines River for the purpose of making good the title of actual purchasers from the said State. If so, how many lands were so released, and for what consideration?

Ans. The Cedar Rapids & Missouri River Railroad Company did release to the State of Iowa in February, 1864, 28,563.$\frac{24}{100}$ acres of said land grant lying within 5 miles of the Des Moines River for the purpose of making good the title of actual purchasers from the State for the nominal consideration of $1 25 per acre, which was never paid.

Int. 9. Do you know of anything else of benefit or advantage to either of the parties to this suit? If yea, state the same as fully and particularly as though you were thereunto specially and fully interrogated.

Ans. I know that none of the lands granted to the Cedar Rapids & Missouri River Railroad Company under act of Congress of 15th May, 1856, when the same conflict with the grant of 8th Aug., 1846, for the improvement of the Des Moines River, were ever certified by the Land Department of the General Government to the State of Iowa, as being embraced by the joint resolution of Congress of 2d March, 1861, or the act of Congress of 12th July, 1862, but that all the odd-numbered
520 sections at said point of conflict have been certified by said Department to said railroad company under the act first above named.

I further know that the present value of the lands at said point of conflict, is about $15 the acre, exclusive of improvements thereon; that the present average value of the lands embraced in said grant of 8th Aug., 1846, situated below the Rac'oon Fork, is about $18 to $20 the acre, exclusive of improvements, and that the average value of the 53,000 acres, more or less, of the said lands, situate below said forks, conveyed to the Des Moines Navigation and Railroad Company by the government of Iowa, on the 3d May, 1858, agreeably to settl't of 22d March, 1855, between said company and the State, is not less than $18 the acre, and that, in the year 1858, when said settlement was made. said lands were worth from $6 to $10 the acre.

W. W. WALKER.

Cross-interrogatories:

Int. 1. State whether or not, during the years 1858, 1859, & 1860, or either of those years, you were one of the officers of the Cedar Rapids & Missouri River Railroad Company; and if so, what office you held, and during what years you held such office.

Ans. The Cedar Rapids & Missouri River Railroad Company was organized in June, 1859, & during the remainder of that year and also

during 1860, I was secretary of said company, and during the last months of the year 1860, I was also chief engineer of said company.

Int. 2. State whether or not, while you were an officer of said company, and before the act of the general assembly of the State of Iowa resuming said lands as indicated in 7th direct interrogatory, you had any knowledge or notice, or information that the lands lying in the odd-numbered sections, within five miles of the Des Moines River, in the county of Boone, held by the State of Iowa, had been granted and conveyed to the Des Moines Navigation and Railroad Company.

Ans. I know that said lands were claimed by the Des Moines Navigation and Railroad Company, but did not know that they had been granted and conveyed to said company.

Int. 3. State whether or not, during the time the bill for the resumption of the lands granted to the State for the construction of the Iowa Central Air-Line Railroad, was pending before the general assembly of the State of Iowa, you made efforts, and took an active part in procuring the passage of the said bill?

Ans. I did make efforts to procure the passage of said bill.

W. W. WALKER.

STATE OF IOWA,
Linn County, ss:

I, Cha's H. Clark, a notary public of the State of Iowa, in and for Linn County, having my office at the city of Cedar Rapids, therein, do hereby certify that, on this fourteenth day of October, 1870, at my said office, personally appeared before me W. W. Walker, the witness named in the annexed stipulation, who, being by me duly sworn, did, then and there, in my presence, make answer to the several foregoing interrogatories, as appears by the answers thereto annexed, which were, then and there, by me reduced to writing; and the same after having been so written, were by me read over to the said W. W. Walker, and
520½ by him afterwards subscribed and sworn to before me and in my presence, at my said office, on the day and year aforesaid.

Witness my hand and seal notarial at my said office, on the fourteenth day of October, 1870.

[SEAL.]

CHA'S H. CLARK,
Notary Public.

(Endorsed as follows:) Deposition of W. W. Walker, read on the hearing & filed Oct. 19th, 1870. George B. Corkhill, clerk.

521 Circuit court of the United States, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of all pleadings, exhibits, and record entries in a certain cause wherein The Cedar Rapids and Missouri River Railroad Company and others were compiainants, and John H. Martindale *were* defendants, and also full, true, and complete copies of all the evidence in a certain cause adjudicated in said court, between William Baker, comp't, and Jesse Williams, defendant, and used in the said case of the Cedar Rapids and Missouri River Railroad Company et al. against Jno. H. Martindale et al., as full, true, and complete as the originals of the same now remain in my office and in my custody.

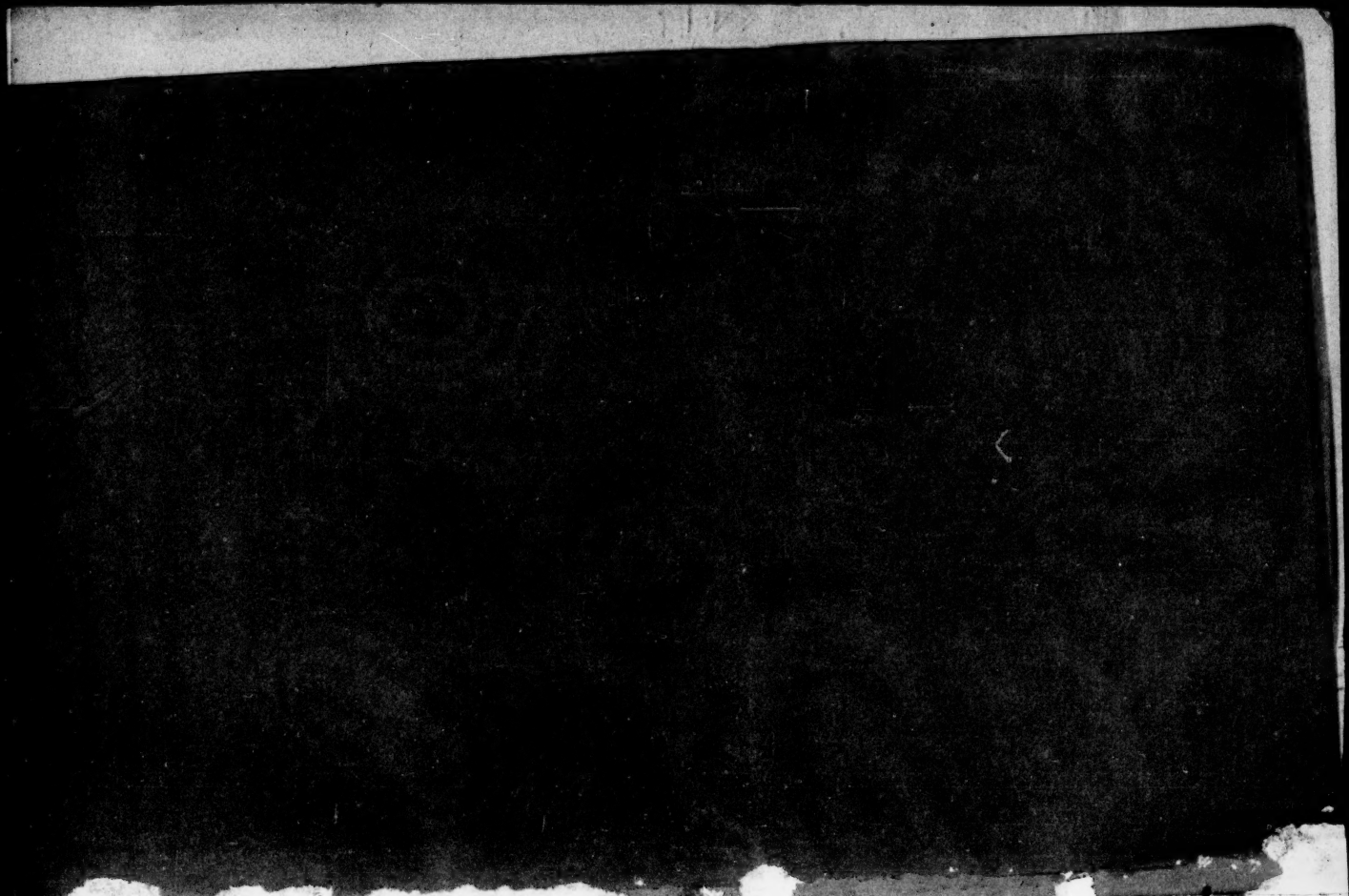
In testimony whereof I hereunto subscribe my name and affix the seal

of said court at my office in Des Moines in said district this 10th day of January, A. D. 1872.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

Cost of trans., $265 35.

(Indorsement on cover:) No. 605. The Cedar Rapids and Missouri River Railroad et al, appellants, vs. John H. Martindale, R. S. Burrows, John Stryker, and The Des Moines Navigation & Railroad Company. Iowa C. C. U. S. Filed 2d February, 1872.



IN THE

SUPREME COURT

Of the United States.

JESSE WILLIAMS, APPELLANT, v. WILLIAM BAKER

AND

IOWA HOMESTEAD COMPANY, APPELLANT, v. THE DE MOINE NAVIGATION AND RAILROAD COMPANY, ET AL.

Dec. 1872

STATEMENT OF FACTS BY APPELLEES.

WITHROW, GATCH & WRIGHT,
AND JAMES M. ELWOOD,
Solr's for Appellees.

In the United States Supreme Court.

DECEMBER TERM, 1872.

JESSE WILLIAMS, *Appellant*, *v.* WILLIAM BAKER, *Appellee*,

AND

THE IOWA HOMESTEAD COMPANY, *Appellant*, *v.* THE DE MOINE NAVIGATION AND RAILROAD COMPANY, *et al*, *Appellees*.

Appeals from the Circuit Court of the United States, for the District of Iowa.

STATEMENT OF THE CASE.

These are respectively the fifth and sixth cases presented to this court, involving a construction of the act of Congress, of August 8th, 1846, entitled "an act granting certain lands to the territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said territory,"[1]—and the fourth and fifth cases involving the construction of that act in connection with the act of Congress of May 15th, 1856, entitled "an act making a grant of lands to the State of Iowa, to aid in the construction of certain railroads in said State,"[2] the

[1] Stat. at Large, p. 77.

[2] 11 Stat. at Large, p. 9.

Joint Resolution of March 2nd, 1861,[3] and the act of July 12th, 1862, entitled "an act confirming a land claim in the State of Iowa."[4]

The first case was the *Dubuque and Pacific Railroad Company*, v. *Litchfield*, reported in 23 Howard, at page 66. It held that the grant of the act of 1846 extended only to the Raccoon Fork of the Des Moines River; that the certification of lands, by the executive officers of the government of the United States, to the State of Iowa, as a part of said grant, was unauthorized and ineffectual to convey a valid title to the State. That decision is regarded as a final disposition of that question by the parties to this litigation.

The second and third cases were *Wolcott* v. *The De Moine Navigation and Railroad Company, and The Same* v. *Burr*, reported in 5 Wallace at page 681. The third was *Riley* v. *Welles*, decided by this court at the December Term, 1869, but not reported. It was held by this court in these cases, that at the date of the passage of the act of May 15th, 1856, the lands which had been certified by the officers of the Government of the United States to the State of Iowa, as a part of the grant of August 8th, 1846, and situated above the Raccoon Fork, were "reserved" within the meaning of the second proviso of section one of the act of 1856, and did not pass to the State as a part of said grant; that those lands certified erroneously as a part of the grant of 1846 and by the State sold to *bona fide* purchasers prior to the passage of the Joint Resolution of March 2nd, 1861, passed to the grantees of the State by the terms of said resolution; and that the title enured to the grantees of the State who acquired title by deeds executed by the State to the De Moine Navigation and Railroad Company prior to the passage of such resolution. The decision of this question is not regarded as final by the appellees in the cases now before the court, for reasons which will be developed in the future statement and argument of the causes.

[3] 13 Stat. at Large, p. 543.

[4] 12 Stat. at Large, p. 25.

In *Williams* v. *Baker*, the plaintiff in the court below and appellee in this court alleges in his petition that he is the owner in fee simple of the north-east quarter ($\frac{1}{4}$) of section twenty-three (23) in township eighty-three (83) north of range number twenty-seven (27) west of the 5th principal meridian in the State of Iowa; that said parcel is within five miles of the Des Moines River; that it was certified to the State of Iowa by the proper officers of the Government of the United States, as a part of the grant made by the act of Congress of August 8th, 1846, to aid in the improvement of the navigation of the Des Moines River; that on the 3rd day of May, 1858, it was by said State, by deed or patents conveyed to the De Moine Navigation and Railroad Company; that on the 3rd day of March, 1858, it was conveyed by said company to plaintiff, and that he is a *bona fide* purchaser from the State of Iowa within the meaning of the Joint Resolution of March 2nd, 1861.

The defendant below and appellant here admits by his answer the legislative and official action alleged in the bill, but denies that it was operative to confer a title upon the plaintiff. By his cross-bill he alleges ownership of the premises in dispute, under the act of Congress of May 15th, 1856, granting lands to the State of Iowa to aid in the construction of certain railroads, among which was a road from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence on said line as nearly as practicable to the forty-second parallel across the said State to the Missouri River; the legislation of the State of Iowa conferring said grant upon the Cedar Rapids and Missouri River Railroad Company, a certification of the lands to the State as a part of the grant of May 15th, 1856, and a conveyance by said railroad company to him. As to the Wolcott and Burr cases decided by this court he alleges: "that there was an identity of interests between the plaintiff's and defendant in both of said causes; that the said Burr and

the said Wolcott were, when said suits were instituted and decided and still are, stockholders and bondholders in the De Moine Navigation and Railroad Company;" that the company was and still is insolvent, its only assets being the lands in dispute; that the plaintiffs were interested in an affirmance of the title as well as in rendering their bonds and stock valuable; that the defendant agreed to and did pay the costs of the suit; that both Wolcott and Burr failed to offer in evidence or bring to the attention of the courts the construction given by the Congress of the United States and the General Assembly of the State of Iowa, as well as the State and Federal officers, to the act of May 15th, 1856, and the action of the executive officers under that act and the act of July 12th, 1862, as well as other important facts tending to sustain the issue on their part, amongst which was the issuance on the 25th day of May, 1863, of the special certificate for 300,000 acres of indemnity land under the act of July 12th, 1862. He charges that said causes "were fictitious and not for the purpose of litigating real questions between the parties thereto, and that the parties to the same co-operated to procure decisions in favor of the title of the said De Moine Navigation and Railroad Company, and that this was a fraudulent device by which the courts were imposed upon, and induced to give a wrong construction to the said acts of Congress, and that the judgments, opinions or decisions rendered in said causes are not precedents or authority in any court or place upon questions affecting the rights of complainant"[5].

The answer to the cross-bill admits the legislation alleged, but denies that it was operative to grant the lands in controversy either to the State or to the said railroad company for railroad purposes; denies the defendant's allegations of title and the official action as alleged; denies the allegations of the cross-bill as to the Wolcott and Burr cases, and alleges that

[5] Williams Baker record, bill p, 6; answer p. 12; cross-bill p. 15—the allegations quoted will be found on pp. 22-3.

while said causes were pending the Dubuque and Sioux City Railroad Company, claiming to be interested in the question involved, applied to this court for leave to intervene and make an argument, and that such leave was granted and such argument made; that said cases involve substantially the same facts involved in this case. He also re-alleges the matters and things set out in the original bill in support of his own title.[6]

General replications were filed to the answers to the original and cross-bills.[7]

The prayer of the plaintiff's petition was granted and the cross-bill dismissed, the decree expressly affirming the validity of the title of the grantees of the De Moine Navigation and Railroad Company.[8] The defendant in the bill and plaintiff in the cross-bill appeals to this court. The facts developed by the evidence set out in the record appear in subsequent parts of this statement.

The bill of the Iowa Homestead Company, in the second case named in the caption to this statement, sets out the act of 1846, and much of the action of the executive officers of the Government of the United States thereunder; the decision of the court in the case of the *Dubuque and Pacific Railroad Company* v. *Litchfield*, with its construction thereof, the act of May 15th, 1856, the legislation of the State of Iowa, and the action of the executive officers of the Government of the United States with regard thereto, the settlement between the State of Iowa and the De Moine Navigation and Railroad Company under the Joint Resolution of March, 1858, the grant by the State to the Keokuk, Fort Des Moines and Minnesota Railroad Company of the same date, the Joint Resolution of Congress, of March 22nd, 1861, the act of the 12th of July 1862, the Harvey settlement of 1866, the conveyances by

[6] Williams-Baker record, answer to defendant's cross-bill, pp. 169—184.

[7] Williams Baker record pp. 14 and 184.

[8] See decree in Williams Baker case, p. 466.

the State to the Des Moines Valley Railroad Company of the lands in place and the indemnity lands received under the act of July 12th, 1862, and many other matters pertinent to the question presented to the court, all of which will appear in proper order in the history of the question which will be hereafter submitted. It assails the Wolcott and Burr cases on substantially the same grounds set out in the cross-bill in the Williams–Baker case. The plaintiff claims lands which have been certified by the executive officers of the general government to the State under the act of August 8th, 1846, and by the State sold to the De Moine Navigation and Railroad Company, and by said company sold to the other defendants, prior to the passage of the Joint Resolution of 1861, and the act of July 12th, 1862, and bases its claim upon the act of May 15th, 1856, and subsequent legislation and official action, pursuant to and under it. It also claims the lands situated in townships eighty-nine (89) and ninety (90) on the west side of the Des Moines River in ranges twenty-eight, (28) and twenty-nine (29), and supports this by the additional fact that these lands west of the river have never been certified to the State as a part of the grant of 1846, and have been certified under the grant of May 15th, 1856. It also claims that the indemnity lands certified to the State under the act of July 12th, 1862, and the so-called Harvey settlement of 1866, are held by the State in trust for its grantees, whose title shall fail, of which it claims to be one, if the judgment of the court shall be against it on the main question involved in this case.[9]

The defendant Burrows answered the bill, claiming title to the parcels in which he is interested, under the act of 1846, the certification of the lands to the State under said act prior to the passage of the act of May 15th, 1856, the conveyance by the State to the De Moine Navigation and Railroad Company pursuant to the settlement of 1858, the Joint Resolution of March 2nd, 1861, and the act of July 12th, 1862[10]. The

[9] Homestead Company case, pp. 10–20.

[10] Answer of Burrows in Homestead Company case, p. 249.

other defendants answer more specifically but setting up substantially the same defense. By stipulation, the answer of Albert H. Tracy and Wm. B. Welles are taken as the answers of all the defendants, except the Des Moines Valley Railroad Company [11].

The defendant, The Des Moines Valley Railroad Company, by its answer, denies the allegations of the bill upon which plaintiff seeks to recover against it, and alleges as to the lands in place within five miles of the Des Moines River and as to the indemnity lands claimed by the plaintiff, that they were legally granted and transferred to it "under and by virtue of several acts of Congress, and of the legislature of the State of Iowa, to-wit: The act of Congress of August 8, 1846; the joint resolution of Congress of March 2nd, 1861; and the act of Congress of July 12, 1862, extending the grant of August 8, 1846; the joint resolution of the general assembly of the State of Iowa of March 22, 1858, containing propositions for settlement with the Des Moines Navigation and Railroad Company, which were accepted by said company; the act of the general assembly of the State of Iowa approved March 22, 1858, entitled "An act disposing of the grant of lands made by an act of Congress granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River;" [12] the act of the general assembly of said State of March 3, 1860; also the act of the general assembly of said State of March 28, 1864; the act of the general assembly of the said State of Iowa approved March 31, 1868;" that it has complied with all the terms and conditions of said several acts; that the indemnity lands are of little value as compared with the lands in place in the original Des Moines River grant; "that the whole of said lands certified under the indemnity act of 1862 were, when selected, of no greater value than the deficiency in said Des Moines River

[11] See stipulation at bottom of p. 486, Homestead Company record. The answer of Tracy, is on p. 251—of Welles on p. 278.

[12] Answer of the Des Moines Valley Railroad Company, Homestead Company case, pp. 272-76.

grant, arising from conveyances made previous to the act extending said grant, and not including the railroad grant of 1856.

On the 10th of May, 1871, said defendant amended its answer, alleging that the Congress of the United States had by an act entitled "an act confirming title to certain lands," approved March 3rd, 1871, ratified and confirmed the grant and conveyance by the State of Iowa to said defendant of the lands which had been certified to said State as indemnity lands, under the act of July 12th, 1862.[13]

It was stipulated that the only questions which should be tried are:

1. In which of the parties is the paramount title to the land in controversy?

2. If the title shall be adjudged to be in the defendant, the De Moine Navigation and Railroad Company, is the plaintiff entitled to be re-imbursed the taxes which it has paid on the lands?

It was admitted that the taxes amounted to $2,000, but if the court should find the plaintiff entitled to re-imbursement, the finding of the amount should be referred to a master.[14]

The subsequent portions of this statement renders a more specific statement of the pleadings now unnecessary.

On the final hearing this bill was dismissed at plaintiff's costs—that portion of it relating to the lands in townships eighty-nine (89) and ninety (90), north of ranges twenty-eight (28) and twenty-nine (29), without prejudice. The plaintiff appeals.[15]

The appellees do not claim that the decisions of this court

[13] See amendment to answer, Homestead Company case, record p. 277.

[14] Stipulations in Homestead Company case, p. 298.

[15] Record in the Homestead case, p. 488.

in *Wolcott* v. *The De Moine Navigation and Railroad Company*, *The De Moine Navigation and Railroad Company* v. *Burr, and Riley* v. *Welles*, are conclusive upon the appellants herein *as judgments* rendered in cases in which they were represented, but we claim that they are *precedents* which this court should follow in the adjudication of causes involving only the same facts, until overruled by the court. The propriety of assailing judicial determinations of questions of law by allegations of fact will be discussed in the proper place. The appellants seek to avoid the force of these decisions by alleging and attempting to prove that they were procured by the fraud of the parties in suppressing material facts which would have affected the construction of the acts of August 8th, 1846, May 15th, 1856, the Joint Resolution of March 2nd, 1861, and the act of July 12th, 1862. A trial of the issue joined upon this allegation involves a comparison of the records in these several cases, with a view to the discovery of discrepancies. We have deemed it best to state in the order of time the enactments of the Congress of the United States and of the General Assembly of the State of Iowa, and the official actions of the officers of both Governments, so far as the same are set out in the records of any of said causes, making references in foot-notes to all or any of the records in which they appear. The foot-notes will thus be made to show what facts are set out in the cases now before the court but omitted in those which have been heretofore decided. The discrepancies thus discovered, their materiality to the construction of the law will be properly discussed elsewhere.

I.

The initial point in the history of this controversy is the act of Congress approved August 8th, 1846, granting to the then territory of Iowa:—

"For the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one

equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents, to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."[16]

This act was accepted by the State on the 9th day of January, 1847.[17]

Before this action was taken by the General Assembly, and on the 14th day of October, 1846, the acting Commissioner of the General Land Office transmitted to the Register and Receiver of the Land Office at Iowa City tract books and other books for use in their offices, and in a letter of explanation said:

"Odd sections within the limits of the grant for the improvement of the Des Moines River have been marked as granted to the State, though the selections have not yet actually been made."[18]

Acting Commissioner PIPER of the General Land Office, by a letter under date of October 17th, 1846, called the attention of Governor CLARK of Iowa, to the act, and requested a selection of the lands. In this letter he said:

Under this grant the Territory is entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River, from Sullivan's line, the northern boundary of Missouri, to the Raccoon Fork of the Des Moines River. The act authorizes the selection to be made by an agent or agents, appointed by you, but as the grant is limited to one equal moiety of the unsold and unappropriated, etc., to be taken in alternate sections, the only selection which appears to be required, or which can be made under the law, is for you to determine whether you will take the lands in the sections having even numbers, as 2, 4, 6, etc., or those that have odd numbers, as 1, 3, 5, etc. The odd numbers would probably be the most advanta-

[16] The Homestead Company case, pp. 43, 302:
Williams-Baker case, p. 197:
Wolcott case, reprinted in the Homestead Company case, p. 387, and in the Williams-Baker case, p. 84:
Burr case, reprinted in the Homestead Company case, p. 420, and in the Williams-Baker case, p. 139.

[17] Homestead Company case, pp. 44, 302:
Williams-Baker case, p. 198:
Riley-Welles case, p. 73:
Wolcott case reprinted in the Homestead case, p. 388, and in the Williams-Baker case, p. 84:
Burr case, reprinted in the Homestead Company case, p. 420, and in the Williams-Baker case, p. 139.

[18] Riley-Welles case, p. 77,—not alleged or proved in the other cases.

geous to the Territory, as in selecting the even numbers you would be deprived of the 16th section in each township, which, as you are aware, is reserved for schools.

* * * * * * * * * * *

When you have determined the sections you will select, please advise the land-officers at Fairfield and Iowa City, who have been instructed to withhold from sale, or entry of any kind, all the vacant and unappropriated lands in the sections you may select. Please also advise this office, return the list and diagram, and a list of the vacant lands in the sections selected will be immediately prepared, submitted to the Secretary of the Treasury for his approval, as required by the law, and when approved will be certified to you.

On the same day he addressed a letter to the Register and Receiver of the Land office at Iowa City, in which he said :

No action can be had by you in this matter, however, till you are advised by the governor whether he will select the sections with the odd or those with the even numbers. As soon as you are so advised, you will please reserve from sale or entry of any kind, all the unsold and unappropriated lands in the sections selected by him till further orders from this office.

It seems that Governor CLARK requested that all communications on the subject from the Department, should be sent to JESSE WILLIAMS, one of the commissioners appointed to make the selection, and on the 27th day of November, 1846, Acting Commissioner PIPER enclosed to him a copy of his letter to the Governor, with the following suggestions :[19]

It is important to the interests of Iowa that the land officers be advised of the selection you design to make at the earliest practicable period, as the sales are progressing and the grant does not attach till the selection is made, and consequently the lands cannot be reserved till that has been done.

On the 17th day of the following December, WILLIAMS and BONNEY, the Commissioners who had been appointed by the Governor to make the selections, reported to him that, "we have selected the odd sections, as designated on the map furnished by the General Land Office, showing the location of

[19] Homestead Company case, pp. 159, 308. Williams--Baker case, pp. 198-200.

the Des Moines, and the sections of land within five miles of said river."[20]

The Register and Receiver at Iowa City received the same information in a letter addressed to them by WILLIAMS, under date of January 10th, 1847.[21]

This was the first reservation made under the grant, and it embraced all of the lands below the Raccoon Fork.

On the 24th day of February, 1847, the General Assembly of the *State* of Iowa, created a Board of Public Works, which consisted of a President, Secretary and Treasurer, and which was charged with the duty of prosecuting the work on the improvement of the Des Moines River and the sale of the lands which had been granted by Congress.

On the 23rd of February, 1848, the Commissioner of the General Land Office gave a new construction to the grant, extending its limits. In a letter to the Secretary of the Board of Public Works of the State of Iowa, he said:[22]

> By the terms of the law, the grant is of an equal moiety, in alternate sections, of the public lands remaining unsold, and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of the river, to be selected within said Territory, etc., and the proceeds are to be applied in the improvement of the navigation of that river, from its mouth to the Raccoon Fork. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa.

Thereafter a proclamation was made, by the President, for a sale of public lands in Iowa, embracing lands in odd-numbered sections, within five miles of the Des Moines River and above

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[20] Homestead Company case, pp. 44, 309:
Williams-Baker case, p. 200:
Riley-Welles case, p. 7 and 66:
Wolcott case, reprinted in Homestead Company case, p. 388, and in Williams-Baker case, p. 84:
Burr case, reprinted in Homestead Company case, p. 420, and in Williams-Baker case, p. 139.

[21] Homestead Company case, p. 309:

[22] Homestead Company case, pp. 310-11:
Williams-Baker case, p. 200.
Riley-Welles case, p. 31:
Wolcott case, reprinted in the Homestead Company case, p. 388, and in the Williams-Baker case, p. 85:
Burr case, reprinted in the Homestead Company case, p. 388, and in the Williams-Baker case, p. 139.

the Raccoon Fork. The Secretary of the Board of Public Works called the attention of the Commissioner to this proclamation and asked that it be corrected.[23] On the same day he addressed a protest against the sale to Register of the Land office by whom it was to be conducted.[24] On the 8th of January, 1849, the Senators and Representatives of Iowa in Congress, addressed a like protest to the Secretary of the Treasury, closing with these words :[25]

> We earnestly request that you will give the necessary instructions for the selection and approval of these lands, along the entire route of the Des Moines, as contemplated by the law, as fast as the surveys are made and returned, and that the lands which belong to the State, which have been inadvertently offered, and which remain unsold, may be withdrawn from the market and certified to the State also.

To this the Secretary responded and also addressed a letter of instructions to the Commissioner of the General Land Office, on the 2nd of March, 1849. These letters being the foundation of the third reservation of lands under the grant, they are copied entire :[26]

TREASURY DEPARTMENT, March 2, 1849.

GENTLEMEN : I have the honor to acknowledge the receipt of your communication of 8th of January last, and accompanying papers, on the construction of the act of Congress, "granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory," approved 8th of August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river from its source to its mouth, but not to lands on the river, in the

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[23] Homestead Company case, p 45 : Williams-Baker case, p. 201 : Riley-Welles case, p. 66 : Wolcott case, reprinted in Homestead Company case, p. 388, and in Williams-Baker case, p. 86 : Burr case reprinted in the Homestead case, p. 421, and in the Williams-Baker case, p. 140.

[24] Homestead Company case, p. 46 ; Williams-Baker case, p. 202 : Wolcott case reprinted in the Homestead case, p. 388, and in the Williams-Baker case, p. 86 : Burr case reprinted in the Homestead Company case, p. 421, and in the Williams-Baker case, p. 141.

[25] Homestead Company case, p. 47 : Williams-Baker case, p. 202 : Riley-Welles case, p. 67. Wolcott case reprinted in the Homestead Company case, p. 389, and in the Williams-Baker case, p. 87 : Burr case, reprinted in the Homestead Company case, p. 421, and in the Williams-Baker case, 142.

[26] Homestead Company case, pp. 48, 310: Williams-Baker case, p. 204 : Riley-Welles case, pp. 31-2 : Wolcott case, reprinted in Homestead Company case, p. 389, and Williams-Baker case, pp. 88-9 : Burr case, reprinted in Homestead Company case, pp. 421-2, and Williams-Baker case, p. 143.

State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, &c.,

R. J. WALKER, *Secretary of the Treasury.*

Messrs. A. C. DODGE, G. W. JONES, S. LEFFLER, W. THOMPSON.

TREASURY DEPARTMENT, March 2d, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date to members in both Houses of Congress from the State of Iowa, with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter to which the within is a reply, and accompanying papers.

Very respectfully, R. J. WALKER.

R. M. YOUNG, *Commissioner.*

Pursuant to the decision thus made and announced, the Commissioner of the General Land Office, wrote to the Register and Receiver at Iowa City, as follows:[27]

GENERAL LAND OFFICE, June 1, 1849.

REGISTER AND RECEIVER, *Iowa City, Iowa:*

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Fork, as this office had previously decided, you are hereby directed to withhold from sale all the land situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Fork.

Enclosed I send you a diagram, upon which the State selections above that point are colored yellow. I have also to request that you will make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

The Register and Receiver acknowledged the receipt of this letter on the 16th of the month, promised to attend to the du-

[27] Homestead Company case, pp. 48, 311: Williams-Baker case, p. 205: Riley-Welles case, p. 32: Wolcott case, reprinted in Homestead case, p. 389, and in the Williams-Baker case, p. 89: Burr case, reprinted in Homestead case, p. 422, and in Williams-Baker case, p. 144.

ties imposed at the earliest practicable moment, and on the 21st of the same month forwarded a list of the lands which had been sold within the limits of this grant, as construed by Secretary WALKER.[28] On the 19th of December, in the same year, the Commissioner of the General Land Office advised the Secretary of the Board of Public Works, that a list of the lands in the Des Moines River Grant above the Raccoon Fork was then "in course of preparation," and would be "ready for transmission at an early day."[29]

The construction given to the grant by Secretary WALKER, was recognized by Secretary EWING (of the new Department of the Interior, to which the control of all public lands was transferred) in a report to the Senate on the 11th day of January, 1850, "showing the amount of public lands originally contained in each State, the number of acres granted to each for objects of internal improvement," in which the number of acres granted to the State of Iowa was estimated at 825,078 acres, to which was appended this note :[30]

> This amount, in accordance with the decision of the late Secretary of the Treasury of the 2nd of March, 1849, will be increased, by the unadjusted portion of the grant for the improvement of the Des Moines River situated between the "Raccoon Fork" and the source of said river, estimated to contain about 900,000 acres.

Some of the lands within five miles of the river, above the Raccoon Fork, and in odd numbered sections, were sold by the local land officers, under the proclamation of the President, prior to the 16th of June, 1849, the date of the receipt by said officers of the decision of Secretary WALKER, of March

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[28] Homestead case, p. 311 :
Williams-Baker case, p. 205 :
Riley--Welles case, p. 32 :
Wolcott case, reprinted in Homestead Company case, p. 386, and in Williams-Baker case, p. 89 :

[29] Homestead Company case, p. 49 :
Williams--Baker case, p. 206 :
Riley--Welles case, p. 68 :
Wolcott case, reprinted in Homestead Company case, p. 389, and in Williams--Baker case, p. 90 :
Burr case, reprinted in Homestead Company case, p. 422, and in Williams--Baker case, p. 144.

[30] Homestead Company case, pp. 312, 49 :
Williams--Baker case, p. 206 :
Wolcott case, reprinted in Homestead Company case, p. 389, and in Williams--Baker case, p. 90 :
Burr case, reprinted in Homestead Company case, p. 422, and in Williams--Baker case, p. 145.

2nd, 1849, communicated in the letter of Commissioner YOUNG of June 1st. A question arose as to the validity of those sales. The new Commissioner of the General Land Office (BUTTERFIELD) was inclined to hold that inasmuch as the State made no formal selections of the lands *above* the Raccoon Fork, as it did those below while the grant was held to extend to that point, the sales were valid. In a letter bearing date the 13th of March, 1850, he submitted this question to the Secretary of the Interior.

On the 6th of the following April the Secretary decided the question submitted by holding that the grant extended only to the Raccoon Fork. We copy his language :[31]

> Having considered the question submitted to me, connected with the claim of the State of Iowa, to select, under the act of August 8th, 1846, lands for the improvement of the Des Moines River, I am clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Fork, without the aid of an explanatory act of Congress."

The Senators and Representatives from Iowa on the 14th of April 1850, protested against this decision and appealed to the President, who referred the question to the Attorney General, the Hon. REVERDY JOHNSON. On the 19th of July, 1850, he submitted an opinion, holding :

> The true reading of the act, I think, is that the land is to run the entire length of the river within the then Territory of Iowa, and the object to be accomplished by it the improvement of the navigation up to the fork.

He also held that the decision of Seceretary WALKER was a final adjudication of the question and was binding upon the Secretary of the Interior.[32]

On the 19th day of September, 1850, the Commissioner ad-

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[31] Homestead Company case p. 49-313: Williams-Baker case p. 206: Riley-Welles case p. 69: Wolcott case reprinted in Homestead Company case p. 389 and Williams-Baker case p. 90: Burr case reprinted in Homestead Company case p. 422 and in Williams-Baker case p. 145.

[32] Homestead Company case p. 12-316: Williams-Baker case p. 210: Wolcott case reprinted in the Homestead Company case p. 390, and in Williams-Baker case p. 91: Burr case reprinted in the Homestead Company case p. 423, and in Williams-Baker case p. 146.

dressed the following letter to the President, touching his power to reserve public lands to aid in works of internal improvement :[33]

GENERAL LAND OFFICE,
September 19th, 1850

His Ex'y M. FILLMORE,
President of the United States.

SIR : I have the honor to acknowledge the receipt of the letter from several members of the Senate and House of Representatives referred by you to this office, asking that the sale of the lands within twenty-five miles of the supposed route of the railroad from Chicago to Mobile be suspended for six months, or until the lands shall have been located, in order that the act may be fully carried out that was recently passed by Congress, granting the right of way, and making a grant to the States of Illinois, Mississippi, and Alabama, in aid of the construction of that road ; and, in accordance with your instructions, beg leave to report :

That, so far as I have been able to examine the question, no authority has been specifically conferred upon the President, by law, to suspend the sale of lands in cases of this character, where they have been proclaimed and offered at public sale. It would appear, however, that he has always been considered as having that authority, by implication, from the nature of the duties devolved on him by the whole system of laws making provision for the sale and disposition of the public domain. For the cases, among others, in which this authority has been exercised by the President, I refer to a letter from this office to the register at Piqua, Ohio, on the 28th of September, 1828, and which is as follows, to-wit :

"The President having been advised by the governor of Ohio that the route of the canal from Dayton to Lake Erie, by the Maumee, will probably pursue the course of the Auglaise River from the head of some one of its branches to its mouth, he has directed that the lands lying on the same, and to the extent appropriated by the act passed the 24th of May last, be reserved from sale till further advised. The governor of Ohio has been requested to designate to you that branch of the Auglaise on which the canal will most probably be located.

"With respect, &c.,

"GEO. GRAHAM,
"*Commissioner.*"

Similar instructions were issued by Commissioner Blake to the land-office at Green Bay, on the 11th of April, 1844, for reserving the lands along the Wisconsin and Fox Rivers, in anticipation of the passage of an act making a grant for the improvement of those rivers, and the reservation then ordered was extended by instructions to those offices of the 8th August, 1846, the day on which the law was passed by Congress, making the grant.

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[33] Homestead Company case p. 319 : Williams-Baker case p. 207 : Riley-Welles case p. 65 : Wolcott case reprinted in the Homestead Company case p. 399 and in the Williams-Baker case p. 109.

In many other cases, the same authority has been exercised, but to a less extent. The foregoing, however, being of an early and late date, are deemed sufficient to show that the President has always been regarded as having this authority. And as it has thus been exercised, and in the present case must of necessity be inferred to enable the Executive to secure to the States mentioned, and the General Government the benefits conferred by the law, and thus carry out the intention of Congress in passing it, I respectfully reccommend:

That instructions be issued to the land-offices in Illinois to withhold from sale, or location of any kind, till further ordered by this office, all the lands belonging to the Government within three full townships, or eighteen miles on each side of the supposed line of this road; and that the land-offices in Mississippi and Alabama be instructed to withhold, in like manner, all the land within four full townships, or twenty-four miles on each side of said route.

The lands can be suspended from sale much more conveniently by townships than by any other given distance, and the reason for reccommending the withholding of a less extent in Illinois than in the other States, is, that the lands in that State are more sought by actual settlers at this time than in the others, and the general route that the road will pass can be more nearly ascertained.

All of which is most respectfully submitted.

With great respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

The Commissioner of the General Land Office, on the 26th of September 1850, submitted to the President an elaborate reply to the opinion of the Attorney General of the 19th of July preceding.

The death of President TAYLOR and the re-organization of the cabinet before the final disposition of the question resulted in a re-reference of this subject to the Attorney General, then the Hon. JOHN J. CRITTENDEN.[34]

On the 15th day of February, 1851, the Board of Public Works of the State of Iowa, addressed to the Commissioner of the General Land Office a letter containing the following paragraph:[35]

[34] Homestead Company case, p. 50: Williams-Baker case, p. 210: Wolcott case, reprinted in the Homestead Company case, p. 390, and in Williams-Baker case, p. 91. Burr case, reprinted in Homestead Company case, p. 423, and in Williams-Baker case, p. 146.

[35] Homestead Company case, p. 326: Williams-Baker case, p. 208: Riley-Welles case, p. 36.

The present board of public works, as well as their predecessors in office, have ever regarded the selection, made by said agents as co-extensive with the grant, and as not limited by the diagram alluded to, which only embraced the lands contiguous to the Des Moines River then surveyed. The selection, in general terms, of the odd sections was supposed to apply to all lands embraced in said grant, as well those surveyed at the time as those thereafter to be surveyed; nor has any formal selection of the lands since surveyed been deemed necessary. Both the former and present board of public works have sold lands not embraced in said diagram and lying below the mouth of Raccoon River, and lists of said lands have been furnished by the General Land Office, and confirmed by the Secretary of the Treasury, and yet no selections of these lands has been made beyond that of the territorial agents. To avoid, however, the difficulty suggested by the honorable Secretary of the Interior, but not admitting that a selection of said lands has not been made in accordance with said act, we, the undersigned, hereby notify the Commissioner of the General Land Office that we have selected all the lands within five miles of the river Des Moines that are embraced within the odd sections from the mouth of said river to the source of the same not embraced in the selection heretofore made by the territorial agents, as granted to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory, by the act of Congress of the 8th of August, 1846.

On the 22nd of the same month the same Board sent to the Secretary of the Interior a telegram, demanding "all the odd sections of land within five miles of the Des Moines River, above Raccoon Fork, for the improvement of said river, as provided by act of Congress upon that subject."[36]

On the 30th of June, 1861, Mr. CRITTENDEN expressed the opinion that the grant did not extend beyond the Raccoon Fork, and on the 26th of July, the Secretary addressed to the Commissioner the following:[37]

DEPARTMENT OF THE INTERIOR.

Washington, July 26, 1851.

SIR: Enclosed I send you a copy of an opinion of the Attorney General, dated the 30th ultimo, in which I concur, relative to the claim of the State of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines River, above Raccoon Fork, together with all the papers in the case.

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[36] Homestead Company case p. 327: Williams-Baker case p. 209: Riley-Welles case p. 37.

[37] Homestead Company case p. 50, 327: Williams-Baker case, p. 210: Riley-Welles case, p. 69: Wolcott case reprinted in the Homestead Company case, p. 390 and Williams-Baker case p. 91: Burr case, reprinted in the Homestead Company case, p. 423 and in Williams-Baker case p. 146.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the withholding of these lands from market until the close of the then present session of Congress, may be continued until the end of the approaching session, in order to give the State the opportunity of petitioning for an extension of the grant by law.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary*.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

This resolution was either re-considered by the Secretary, or he was overruled by the President, as is indicated by the following letter to the Commissioner of the General Land Office :[38]

DEPARTMENT OF THE INTERIOR, .
Washington, Oct. 29th, 1851.

SIR : I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month. I have reconsidered and carefully reviewed my decision of the 26th of July last, and doing so, find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country ; and although my own opinion on the true construction of this grant is unchanged, yet, in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinion of several eminent jurists, which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections, without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary.

You will please, therefore, as soon as may be practicable, submit for my approval such lists as have been prepared, and proceed to report, for like approval, lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork, as far as the surveys have progressed, or may hereafter be completed and returned.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary*.

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

The lists which had been submitted to Secretary EWING and by him returned to the Commissioner, were now submit-

[38] Homestead Company case, pp. 50, 328 :
Williams Baker case, pp. 211 :
Riley-Welles case, p. 33 :
Wolcott case, reprinted in Homestead Company case, p. 390, and in Williams-Baker case, p. 91 :
Burr case, reprinted in Homestead Company case, p. 423, and in Williams-Baker case, p. 146.

ted to Secretary STUART, October 30th, 1851. The lists severally bore the following captions :[39]

List No. 1. Showing the tracts falling within the limits of the Des Moines grant, above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d of March, 1849, that such grant extended to the north boundary of the State.

List No. 2. Showing tracts disposed of within those limits, in the interval between the date of one of the previous orders limiting the grant and one of those extending it above the forks.

List No. 3. Showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement.

DEPARTMENT OF THE INTERIOR, *Oct. 30th*, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th inst. to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known at the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of, prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART, *Secretary*.

The certified lists were returned by the Secretary to the Commissioner on the 30th of October, 1851, and on the 1st of November, 1851, were sent to V. P. VAN ANTWERP.[40]

On the 16th of March, 1852, the Commissioner of the General Land Office sent to the Register of the local land office at Dubuque, a list of lands bearing the following caption :

A list showing the vacant lands in odd-numbered sections above the Raccoon

[39] Homestead Company case, pp. 50–1, 315 :
Williams–Baker case, pp. 211, 256–265 :
Riley–Welles case, pp. 45–55 :
Wolcott case, reprinted in Homestead Company case, p. 390, and in Williams–Baker case, p. 92 :
Burr case, reprinted in Homestead Company case, p. 423, and in Williams–Baker case p. 146–7.

[40] Homestead Company case, p. 51 :
Williams–Baker case, p. 212, 265 :
Riley–Welles case, p. 70 :
Wolcott case, reprinted in Homestead Company case, p. 390, and in Williams–Baker case, p. 92 :
Burr case, reprinted in Homestead Company case, p. 423, and Williams–Baker case, p. 147.

Fork, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th of August, 1846, as construed by the Secretary of the Treasury, in his letter of the 2nd March, 1849, and of the Secretary of the Interior of the 29th of October, 1851, which have not heretofore been approved.

The approval appended to this list was as follows :[41]

DEPARTMENT OF THE INTERIOR,
Washington, March 10th, 1852

The selections embraced in the within list are hereby approved in accordance with the views expressed in my letter of the 20th of October last, to the Commissioner of the General Land Office, subject to any right which may have existed at the time the selections were made known to the land officers by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of, prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker to the effect that the grant extended above the Raccoon Fork. ALEX. H. H. STUART.

A copy of this was sent to GEORGE GILLASPY, Register of the Des Moines River Improvement, at Ottumwa, Iowa. A similar list, embracing the lands in the Iowa City District, was sent to the Register at Iowa City.[42]

On the 23rd of August, 1852, Secretary STUART, addressed the following letter to the Acting Commissioner of the General Land Office :[43]

DEPARTMENT OF THE INTERIOR,
Washington, August 23d, 1852.

SIR : I have examined the question involved in the appeal of the Honorable A. C. Dodge, Geo. W. Jones, and Bernhart Henn, of Iowa, from the judgment of the Commissioner of the General Land Office, in relation to their application for the issue of patents on the sales and locations of portions of the odd-numbered sections along the Des Moines River, above the Raccoon Fork, which had been made prior to the receipt by the district land officers of Mr. Secretary Walker's decision of the 2d of

[41] Homestead Company case, pp. 51, 329 :
Williams-Baker case, p. 212 :
Riley-Welles case, pp. 45 :
Wolcott case, reprinted in Homestead Company case, p. 391, and in Williams-Baker case, p. 92 :
Burr case, reprinted in Homestead Company case, p. 424, and in Williams-Baker case, p. 147.

[42] Homestead Company case, p. 329 :
Williams-Baker case, p. 212-13 :
Riley-Welles case, p. 36.

[43] Homestead Company case p. 52 :
Williams-Baker case p. 213 :
Burr case reprinted by the Homestead Company case p. 424 and in Williams-Baker case p. 148.

March, 1849, and have to state that, as I approved the selections above the Raccoon Fork, with the express understanding that that approval should not convey to the State any title to tracts which might have been sold or otherwise disposed of prior to the receipt of Mr. Walker's decision, the issuing of patents on the sales and locations in question is in perfect accordance with the views expressed in my letter to the Commissioner of the 29th of October last, and the terms of approval of the selections o the following day.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary*.

The ACTING COMMISSIONER OF THE GENERAL LAND OFFICE.

The act of Congress of the 4th September, 1841, gave to each new State five hundred thousand (500,000) acres of land. These lands were devoted by the State of Iowa to educational purposes; and in 1853 it was found that lands had been selected as a part of this grant from among the odd-numbered sections lying within five miles of the Des Moines River and above the Raccoon Fork. These sections amounted to twelve thousand eight hundred and thirteen and 51-100 (12,813.51-100) acres. Under the construction of the act of August 8th, 1846, made by Secretary WALKER these lands were embraced within the last men tioned grant. The Register of the Des Moines River Improvement called the attention of the Commissioner of the General Land Office to this conflict, On the 2nd day of December, 1853, the acting Commissioner wrote to the Register :

Assisted by the information contained in your letter of the 7th ult., I have ascertained that there are a number of tracts of land selected by the State of Iowa under the 8th section of the act of 4th September, 1841, situated within the limits of the Des Moines River grant, under which (the grant) the State is entitled to them, and you are advised that when the grant is adjusted which will be in a short time, so far as the surveys have progressed, the approval of the selections so situated will be rescind ed and the State be authorized to select others in lieu thereof.

On the 6th of January, 1854, the Commissioner certified to the Register, a list of these lands, as "erroneously approved the 20th of February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State, under the Des Moines River Grant, now approved by the Secretary of the Interior, under the act of 8th August,

1846." On the same day he wrote to THOMAS H. BENTON, jr., Superintendent of Public Instruction for the State of Iowa, enclosing a similar list and advising him that the State would be entitled to select an equal amount of other lands in lieu of these."

On the same day he sent to the Register and Receiver of the Land Office at Des Moines a copy of the list of the "lands falling within the Des Moines River Grant, under the act of 8th August, 1846, selected by the State under the 8th section of the act of the 4th of September, 1841, on the 20th of July, 1850, and erroneously approved on the 20th February, 1851, previous to the adjustment of the grant for those townships, and before it was known that they belonged to the State, under the Des Moines River Grant." The Register and Receiver were instructed to enter these upon the "plat and tract books, as approved under the act of 8th August, 1846." [45]

On the 17th and 30th days of December, 1853, the Secretary of the Interior certified to the State of Iowa lands above the Raccoon Fork, the certificate having the following heading: [45]

"A list showing the vacant lands in the odd-nnmbered sections above the Raccoon Fork, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior, of the 29th of October, 1851, which have not heretofore been approved."

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[44] Homestead Company case, pp. 52 and 333:
Williams-Baker case, pp. 214, 217:
Riley-Welles case, pp. 38, 72, 75:
Burr case, reprinted in Homestead Company case, p. 425, and in Williams-Baker case, pp. 148-9.

[45] Homestead Company case, pp. 53, 334:
Williams-Baker case, p. 217:
Riley-Welles case, p. 38.

[45] Homestead Company case, pp. 51 and 52:
Williams-Baker case, pp. 214-5:
Riley--Welles case, pp. 40, 45, 57:
Wolcott case, reprinted in Homestead case, p. 391, and in the Williams--Baker case, pp. 92-3:
Burr case, reprinted in the Homestead Company case, p. 424, and in the Williams-Baker case, p. 147.

Which list was approved in these words :

DEPARTMENT OF THE INTERIOR,

December 17th, 1853.

The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties. R. McCLELLAND, *Secretary*.

On the 15th day of December, 1853, the State of Iowa entered into a contract with HENRY O'REILLY in which the latter undertook the performance of the labor and the furnishing of the material for the improvement of the Des Moines River. On the 14th of April, 1854, a supplementary agreement was entered into by and between the parties. This contract is not set out in evidence, and its provisions in detail are not disclosed by the record.

The last certification of lands to the State, under the grant of August 8th, 1846, was made on the 30th of December, 1853. The lands above the Raccoon Fork were certified as follows : [46]

October 30th, 1851	81,707,93	acres.
March 10th, 1852	143,908,37	"
December 17th, 1853	33,142,43	"
December 30th, 1853	12,572,51	"
	271,572,24	

When any of said lands were certified and approved, an entry was made upon the tract books, or registers of the public lands, contained among the records of the General Land

[46] Homestead Company case p. 51, 95–112 incl :
Williams-Baker case p. 214, 248- 265–82 :
Riley-Welles case pp. 37–55 :
Wolcott case reprinted in the Homestead Company case p, 391 and in Williams-Baker case p. 92 :
Burr case reprinted in Homestead Company case p. 424 and in Williams--Baker case 147.
The statements on pp. 51 and 424 Homestead Company case, and p. 147 Williams-Baker case, includes 132,663.65 acres, which were situated below the Raccoon Fork.
(See accompanying maps for plat of land certified.)

Office, showing the lands so approved, by townships, ranges, districts, and sections, as follows:

Township No. ——, *Range No.* ——, *District of* ——.

Description of Tract.				Contents.		Rate per acre		Purchase Money.		Names of Purchasers.
Part of Section.	Township.	Section.	Range.	Acres.	100th.	Dollars.	Cents.	Dollars.	Cents.	
										Granted to the State of Iowa for Des Moines River Improvement, per act, 8th August, 1846. Approved 17th December, 1853, (or other date, according to date when the section was approved by Secretary of the Interior.)

Such an entry was made upon said tract books and records of the Land Office as to all the lands which were approved to the State of Iowa, under the act of 8th August, 1846, including the lands in question in this suit; and said entries remained upon said records uncancelled and without qualification, during the whole period of the time from which they were originally made until the decision of the Supreme Court of the United States in the case of *Litchfield* v. *The Dubuque and Pacific Railroad Company*, reported in 23rd Howard, at p. 66.

The lands so approved were, at the time of approval, marked and indicated upon the township maps or plats in the General Land Office, as being included in and forming a part of the grant of lands made to the State of Iowa, by the act of August 8th, 1846, and they remained so marked and indicated all the time thenceforth until after the date of said decision; and during the same period the said lands were also marked and indicated upon the township maps and plats kept in the

land office of the United States in the districts where said lands were situated, as having been granted to said State under and by virtue of said act of 8th August, 1846; and after date of the order of the General Land Office of June 1st, 1849, directing said lands to be withheld from sale, they were always by the General Land Office and the Department of the Interior withheld from sale and pre-emption, and were considered and held as appropriated and reserved for the purpose of satisfying the grant made by said act, under the direction and orders of the officers of the United States having charge and control of the public lands of the United States, up to the decision aforesaid.

As fast as said lands were approved to the State of Iowa the State assumed the control of and exercised title over the same, including those above as well as those below the Raccoon Fork, and continued to hold the title and exercise control over the same; that from time to time it made sales of portions of them, and its grantees openly and notoriously claimed the title and exercised acts of ownership over the same; that many of its grantees are in the actual possession of the several portions which they had purchased; that on the 15th of May, 1856, July 14th, 1856, the 22d of March 1858, and the 3rd day of May, 1858, many of the grantees of the State had conveyed lands purchased of the State to other parties who were in the actual possession of the property.

After the grant was made by the act of August 8th, 1846, the State proceeded from time to time to sell and dispose of the lands, applying the proceeds to the improvement of the Des Moines River.[47]

The list certified on the 30th of December, 1853, embraced all of the unsold lands as far as the surveys had progressed

[47] Williams--Baker case, p. 215: Wolcott case, reprinted in the Homestead case, pp. 391-4, and in the Williams--Baker case, pp. 95, 97: The documentary evidence in the Homestead Company case shows the same facts.

The Commissioner of the General Land Office transmitted this to the Register of the Land Office at Des Moines, with the following letter: [48]

GENERAL LAND OFFICE, *January 7th*, 1854.

SIR: I enclose a copy of a list of the vacant lands in the odd-numbered sections above the Raccoon Fork, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th of August, 1846, as construed by the Secretary of the Treasury, in his letter of 2nd of March, 1849, and of the Secretary of the Interior, of the 29th of October, 1851, approved by the Secretary of the Interior on the 17th ultimo.

The quantity embraced by the list is 33,142.43 acres.

You will please have them entered upon your tract and plat books.

I also enclose a copy of a list of lands falling within the Des Moines River grant, under act of 8th of August, 1846, selected by the State under the 8th section of the act of the 4th of September, 1841, on the 20th of July, 1850, and erroneously approved on the 20th of February, 1851, previous to the adjustment of the grant for those townships, and before it was known that they belonged to the State under the Des Moines River grant.

This list was approved on the 30th ult., and embraced 12,813-51 acres.

You will please note these selections upon your plat and tract books, as approved under act of 8th of August, 1846, and cancel the approval of the same as selections under the act of 4th of September, 1841.

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner*.

REGISTER OF THE LAND OFFICE,
Fort Des Moines Iowa.

The lands in townships eighty-nine (89) and ninety (90), ranges twenty-eight (28) and twenty-nine (29) west, embracing lands within five miles of the Des Moines River, and on the west side thereof, were not surveyed until May, 1854, after which date no lands were certified to the State as embraced in the grant of August 8th, 1846.[49] The lands in place in controversy between the Iowa Homestead Company and the defendant, the Des Moines Valley Railroad Company, are in these townships and ranges on the west side of the Des Moines River. No claim is made as to them by the De Moine Navigation and Railroad Company and its grantees.

[48] Homestead Company case, p. 334: Williams--Baker case, p. 218. Riley-Welles case, p. 56:

[49] Homestead Company case, p. 298--9.

The De Moine Navigation and Railroad Company was incorporated on the 6th of May, 1854. Its principal object or business was the improvement of the Des Moines River by means of locks, dams and canals, and otherwise as should be found expedient and proper, and to construct railroads connected with or separate from the same as should seem desirable.[50]

On the 9th day of June, 1854, the De Moine Navigation and Railroad Company entered into a contract with the State of Iowa, in which was recited the agreement made between the State and the said O'Reilly and the assignment of the same, with the consent of the parties, to said company. The company on its part undertook to make and finish the Des Moines River Improvement from the Mississippi River to the Raccoon Fork on the Des Moines River, according to the plans and specifications in said contract set out or referred to, and to pay all debts of every kind and description outstanding against said improvement, as well as all claims for damages to mill owners, for rights of way and other necessary privileges in the prosecution of said work, and the salaries of all officers, engineers and other assistants required in the prosecution of the work. The State on its part undertook to sell and convey to said company all the lands donated to the State by the act of Congress of August 8th, 1846, which had not been sold up to the 23rd day of December, 1853, for which the company agreed to pay in making the improvement the sum of one million three hundred thousand dollars ($1,300,000.) [51]

After this contract was made the company proceeded with the work upon the improvement, and the state by its regularly authorized officers issued to it, from time to time as the work

[50] Homestead Company case, p. 337 : Williams-Baker case, p. 299 : Riley- Welles case, p. 81 : Wolcott case, reprinted in the Homestead Company case, p. 386 and in the Williams--Baker case, p. 83 : Burr case, reprinted in the Homestead Company case, p. 419, and in the Williams -Baker case, p. 138.

[51] Homestead Company case, p. 339 : Williams--Baker case, p. 387 : Riley--Welles case, p. 85 : Burr case, reprinted in the Homestead Company case, p. 126, and in the Williams-Baker case, p. 153.

progressed, in payment therefor, certificates showing the sale by the State to the Company of the lands therein described.[52]

The act of Congress of August 3rd, 1854, entitled "an act to vest in the several States and Territories the titles in fee of the lands which have been or may be certified to them" provides that certified lists shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby, but when lands embraced in such lists are not of the character embraced by such act of Congress, and are not intended to be granted thereby, said lists so far as the lands are concerned, shall be perfectly null and void, and no right, title, claim or interest shall be conveyed thereby."[53]

On the 20th of January, 1855. the General Assembly of the State of Iowa, instructed the Commissioner of the Des Moines River Improvement to negotiate with the De Moine Navigation and Railroad Company for the sale of the lands which had been selected within the limits of the grant as a part of the lands granted to the State by the act of September 4th, 1841, and by the State sold to individuals.[54]

On the 21st of March, 1856, the Commissioner of the General Land Office decided that the grant was limited to the Raccoon Fork. The question was again brought before the Secretary of the Interior, and was by him referred to the Attorney General, the Hon. CALEB CUSHING.[55]

On the 10th of May, 1856, the Commissioner of the General

[52] Williams-Baker case, p. 216 :
Wolcott case, reprinted in Homestead Company case, p. 394, and in Williams-Baker case, p. 97 :
Burr case, reprinted in Homestead Company case, p. 427, and in Williams-Baker case, p. 153.

[53] Williams-Baker case, p. 24 :

[54] Williams-Baker case, p. 218.

[55] The Homestead Company case, p.53 :
Williams-Baker case, p. 221 :
Wolcott case, reprinted in the Homestead Company case, p. 391, and in the Williams-Baker case, p. 93 :
Burr case, reprinted in the Homestead Company case, p. 425, and in the Williams-Baker case, p. 149.

Land Office directed the Registers and Receivers at Council Bluffs, Dubuque, Chariton and Fort Des Moines, Iowa, to suspend from sale or location, all the public lands in their several districts.[57]

On the 12th day of May, 1856, in a letter to the Hon. GEO. W. JONES, then a Senator from the State of Iowa, the Commissioner of the General Land Office, submitted the following estimate of the amount of lands which would accrue to the State under the bill granting lands to the State to aid in the construction of Railroads, then pending in Congress.[58]

"A,"—IOWA RAILROAD GRANTS.

Routes.	Estimated miles.	Granted.
Dubuque via Fort Dodge to Sioux City	295	1,132,800
Lyons City, via Mauquoketa due west to Missouri River	325	1,248,000
Davenport, via Iowa City, Fort Des Moines, to Council Bluffs	290	1,113,600
Burlington, west, to mouth of La Platte River	225	079,200
Total	1,165	4,473,000
Deduct for Des Moines River grant, which crosses 4 times 10x4	40	153,600
Leaves	1,125	4,320,000

quantity to which the State would be entitled if to be had within the alternate sections within fifteen miles of the road.

Whole surface of Iowa is	22,584,960 acres.
Estimated vacant 30th September, 1855	13,804,163 "
Amount that would be liable for selection, if the lands were all vacant, 1,125x15 x 640 acres	10,800,000
Therefore, as 32 : 13 : : 10,800,000	4,387,500

The estimated amount vacant and liable to selection for the grant within the prescribed limits, and equal to the quantity granted: But the deficiency on one route cannot be made up on another; it is possible, therefore, that the lands will hold out.

We have endeavored in the foregoing pages to state all of the acts of the Legislature and of the executive officers of the State, and of Congress and of the executive officers of the

[57] Homestead Company case, p. 335: Williams-Baker case, p. 219: Riley-Welles case, p. 60: Wolcott case reprinted in the Homestead Company case, p. 401, and in the Williams Baker case, p. 113.

[58] Homestead Company case, p. 335: Williams-Baker case, p. 219: Riley-Welles case, p. 61: Wolcott case reprinted in the Homestead Company case, p. 402, and in the Williams Baker case, p. 115.

Government of the United States, with regard to this grant up to the 15th day of May, 1856. On that day the act entitled "an act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," was approved. It granted to the State of Iowa to aid in the construction of certain railroads therein named, "every alternate section of land designated by odd numbers for six sections in width on each side of each of said roads," also as much land in addition thereto, outside of said limits and within fifteen miles of each of said lines, as shall be equal to the lands within the six miles limits which had been sold or otherwise appropriated or to which rights of pre-emption had attached. To this grant was attached the following *proviso*:[59]

"And provided further, that any and all lands heretofore reserved to the United States, by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operations of this act, except so far as may be found necessary to locate the routes of said railroads through such reserved land, in which case only the right of way shall be granted, subject to the approval of the President of the United States."

On May 15th, 1856, the Commissioner wrote to the Registers and Receivers at Des Moines and Fort Dodge, Iowa, notifying them of the passage of the bill last above mentioned, and instructing them to withhold all lands from sale or location until further orders.[60]

II.

On the 29th of May, 1856, fourteen days after the passage of the act making the grant to the State of Iowa to aid in the construction of certain railroads, the Attorney General, Honorable CALEB CUSHING, submitted to the Secretary of

[59] Homestead Company case, p. 89: Williams–Baker case, p. 25: Wolcott case, reprinted in Homestead Company case, p. 400, and in Williams–Baker case, p. 111: Burr case, reprinted in Homestead Company case, p. 428, and Williams–Baker case, p. 158.

[60] Homestead Company case, p 76: Williams–Baker case, p. 220: Riley–Welles case, p. 60.

the Interior an elaborate opinion in which he reviewed the history of the grant.

As to the past he said:

In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did, in this respect, with deliberation, what you did, without the questions involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided, and done by the head of a Department acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion of December 28, 1852, MS.; see also Bank of Metropolis vs. The United States, XV Peters, p. 400; ex parte Randolph, II Brooker, p. 470.)

As to the future:

"I advise, therefore, that you propose to the State of Iowa and its assigns to acquiesce in and accept the decisions of Mr. Stuart as final, and to approve selections accordingly; provided the State or its assigns will themselves agree to acquiesce in and accept that decision as final." [61]

On the 9th of June, 1856, the Secretary of the Interior advised the Commissioner of the General Land Office that he had resolved to act in accordance with the advice of the Attorney General. He also gave the following instruction as to future certificates: [62]

In the certificate of approval, hereafter prepared for my signature on any lists submitted, the fact should be stated, that the approval being based on the prior action of the Department, and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part, in this limit, and an abandonment of all

[61] Homestead Company case, p. 172: Williams-Baker case, pp. 221, 376: Wolcott case, reprinted in the Homestead Company case, p. 391, and in the Williams--Baker case, p. 93: Burr case, reprinted in the Homestead Company case, p. 425 and in the Wiliams--Baker case, pp. 194.

[62] Homestead Company case p. 59, 183: Williams-Baker case, p. 221, 386: Riley--Welles case, p. 63: Wolcott case reprinted in the Homestead Company case, p. 391 and Williams-Baker case p. 94: Burr case, reprinted in the Homestead Company case, p. 425 and in Williams-Baker case p. 51.

claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

On the 19th of June, 1856, the following letter was addressed by the Commissioner of the General Land Office to the Land Officers at Fort Dodge and Fort Des Moines:[63]

GENERAL LAND OFFICE, *June 19th*, 1856.

GENTLEMEN: Instructions having been sent you from this office by telegraph on the 10th ult., and subsequently by mail on the 15th ult., in reference to the withdrawal from market of certain lands in your district, in pursuance of an act of Congress, approved on the 15th ult., making a grant of land to the State of Iowa in alternate sections, to aid in the construction of certain railroads in that State, you are advised that settlements are authorized upon any of the lands thus withdrawn, and rights of pre-emption may be acquired, as well to sections which may be odd-numbered and within the six mile limits of the line of the railroads, as to the other lands so reserved.

By the first section of the act referred to, the United States can dispose of, by pre-emption, any of the lands thus withdrawn up to the time "when the lines or routes of said road are definitely fixed." Then, and not till then, will the right of the State attach under the said act to all vacant lands in the odd-numbered sections within the six mile limits.

Acknowledge the receipt of this.

Very respectfully,

THOS. A. HENDRICKS, *Commissioner*.

Subsequently a "notice for the restoration of certain lands to market in Iowa" was given, whereby the public was advised that "all the vacant *offered lands* heretofore withdrawn from sale or entry along the routes of said railroads situated in the undermentioned townships, which *have not been selected by virtue of said grant or any other grant made by Congress*, or legally claimed by pre-emption, *and which were subject to private sale at date of withdrawal* will be restored to private entry on the days and at the places" in said notice specified. Those in townships eighty-six (86), eighty-seven (87), and

[63] Homestead Company case, p. 76: Riley--Welles case, p. 124: Wolcott case, reprinted in Homestead case, p. 401, and in the Williams-Baker case, pp. 114.

eighty-eight (88), in ranges twenty-nine (29), thirty (30) thirty-one (31), thirty-two (32) and thirty-three (33), were to be restored at Fort Dodge on the 23rd day of the following February.[64]

On the 14th of July, 1856, the General Assembly of the State of Iowa accepted the grant of the 15th of May, and enacted that so much of "the lands, interests, rights, powers and privileges as are or may be granted and conferred in pursuance" of said act, "to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River at or near Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road, * * are hereby disposed of, granted and conferred to and upon the Dubuque and Pacific Railroad Company:"[65] and so much of the same as were granted and conferred "to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, accross the said State to the Missouri River" were disposed of, granted and conveyed "to the Iowa Central Air Line Railroad Company."[66]

On the 16th of July, 1856, Secretary McCLELLAND wrote as follows to the Acting Commissioner of the General Land Office:[67]

DEPARTMENT OF THE INTERIOR,
July, 16th, 1856.

I return herewith the letter of W. C. Johnson, Esq. submitted in yours of the 14th instant, having relation to the grant for the improvement in the river Des Moines, and agree with you in opinion that action should be suspended in reference to the subject matter, until the assent of the proper authorities is obtained to the condi-

[64] Homestead Company case, p. 77.
[65] Homestead case, p. 91.
[66] Williams-Baker case, p. 31: Wolcott case, reprinted in Homestead Company case, p. 402, and in the Williams Baker case, p. 116: Burr case, reprinted in Homestead Company case, p. 428, and in Williams-Baker case, p. 158.
[67] Riley-Welles case, p. 63:

tions mentioned in the Attorney General's opinion of the 29th May, and my letter of the 9th June last.

Respectfully, your obedient servant,

R. McCLELLAND, *Secretary*.

Hon. REVERDY JOHNSON, applied to the Secretary of the Interior, on the 10th of November, 1856, for patents conveying the lands already certified to the State, assigning as a reason that the lands would be more available with such evidence of title. The Secretary on the same day declined to execute the patents. In his letter the following paragraphs occur : [68]

In the opinion of the Attorney General of the 29th of May last, in the Des Moines River case, it is stated : "In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the government can not undo that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was in each case done by the competent legal authority, and binds the government * * * * *" In the foregoing views of the Attorney General, I have concurred ; and for the reason that the acts of approval by Mr. Stuart and myself have divested the United States of the title, I can see still further ground to decline issueing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment like selections not yet approved.

On the 16th of November, 1856, the President of the Des Moines Navigation and Railroad Company submitted to the Governor of Iowa a report setting forth substantially that the company immediately after the execution of the contract of June 9th, 1854, adjusted and paid the State debt amounting to over $70,000 ; that it had prosecuted the work with considerable progress ; that the work had been delayed by the decision of the Secretary of the Interior, that the grant extended only to the Raccoon Fork ; that the then position of the Department that the grant extended only to the north line of the State embarrassed the work and rendered a modification

[68] Homestead Company case, p. 347 : Williams-Baker case, p. 223 : Riley-Welles case pp. 33, 59 : Wolcott case reprinted in Homestead Company case p. 39, and Williams-Baker case p. 94 : Burr case, reprinted in the Homestead Company case, p. 426, and in the Williams-Baker case, p. 152 :

of the plan for the improvement necessary; that the company had then expended, exclusive of the salaries of its officers and office expenses, over $360,914.14 in construction and on the State debt; that on account thereof there had been certified to it by the Register and Commissioner of the Des Moines River Improvement 205,489.23-100 acres of land under the contract, leaving a balance of over $100,000, which would more than exhaust the balance of the lands which had been certified to the State.[69]

On the 3rd of March, 1857, the Commissioner of the General Land Office wrote to the agent of the State of Iowa, who was also the agent of the several railroad companies interested in the grants made by the act of May 15th, 1856. the following letter:[70]

GEENRAL LAND OFFICE,
March 3d, 1857.

SIR: In reply to your communication of the 28th ultimo, requesting a statement of the quantity of land which will enure to the Dubuque and Pacific Railroad Company in Iowa, under the act of Congress approved the 15th May, 1856, subject to the terms and conditions of said act, and to the acts of legislative assembly of said State, the following estimates carefully prepared at this office are communicated:

1st. The length of the Dubuque and Pacific road and branch to the Tete des Morts measured on the official map of the routes, is 331½ miles.

Which at six sections, or 3,840 acres per mile would make	1,272,960 acres.
Deduct for water	21,920 "
Leaves	1,251,040 "

To which the company would be entitled if found vacant in the odd-numbered sections within fifteen miles of the road.

2nd. The estimated quantity of vacant land in the odd-numbered sections, *within* fifteen miles of the road, and liable for selection, (all situated in Iowa) is as follows:

In the Sioux City district	880,200 acres.
" Fort Dodge "	415,360 "
" Dubuque "	11,045 "
Total	1,306,605 "

[69] Homestead Company case p. 168: Williams-Baker case p. 370:
[70] Homestead Company case, p. 348: Williams Baker case, p. 228: Riley-Welles case, p. 62. Wolcott case reprinted in the Homestead Company case, p. 403, and in the Williams Baker case, p. 119:

Which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant above the Raccoon Fork, within the fifteen miles limit of the railroad grant, and not yet decided.

It appears, therefore, from the above, that the Dubuque and Pacific Railroad Company will obtain their full complement of land under the grant, estimated to cover 1,251,040 acres.

I am, sir, very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

HON. BERNHART HENN,
Agent of the State of Iowa and the Railroad Companies, Washington, D. C.

The report of the Commissioner of the Des Moines River Improvement to the General Assembly and to the Governor, and the report of the Joint Committee on the Des Moines River Improvement, submitted to the General Assembly of 1857, put in evidence by the appellees, show very clearly that "disagreements and misunderstandings" had arisen between the De Moine Navigation and Railroad Company and the State, with regard to the performance of the contract of the 9th of July, 1854.[71]

On the 22nd of March, 1858, the General Assembly by a Joint Resolution reciting the existence of such disagreements and misunderstandings, proposed a settlement of the same. It proposed that the Company should :—

1. Execute—

To the State of Iowa full releases and discharges of all contracts, agreements, and claims with or or against the State, including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company, and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement :

2. To relinquish to the State all of the lands, the conveyance of which to said company was not provided for by said reso-

[71] Williams Baker case, p. 338–440 :

lution; the same to be held by the State with "all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company," and "among the lands excepted and not granted by the State to said company, were 25,487.87 acres, lying immediately above the Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa:"

3. Release or convey to the State of Iowa, or its representatives, all materials of every kind and description, prepared for, or intended for the construction of locks or dams in said improvement, wheresoever the same should be; and the State should take the existing contracts, but no other liabilities of any name or nature, excepting as therein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth and Croton, and no other or different, with all liabilaties and advantages arising upon said contracts and per centage retained thereon, excepting that the company should pay all estimates for work done or material prepared up to said date, beyond the percentage retained from the contractors under their agreements:

4. Pay the State the sum of twenty thousand dollars, which should be paid to the order of the commissioner of the Des Moines River Improvement, as fast as he should require the same to liquidate existing liabilities against said Des Moines River Improvement, on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of eleven thousand dollars, which were due and unpaid, should be received in part payment of said sum of twenty thousand dollars; that in consideration of the performance of these requirements by said company the State should:—

1. By—

Its proper officer, certify and convey to the said company all lands granted by

an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said company or its assignees shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the cost and charges of said company:

2. Discharge said company from all claims against the State or the said Improvement, or any of its officers or agents, arising from or growing out of any agreement or liability prior to the 9th day of June 1854, and said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

It was further provided:

"That if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State so as to become subject to grant, the said remaining lands, after the payment of all the liabilities as aforesaid, against said improvement and the completion of such locks and dams in the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines."

The company was required to file a written acceptance of these terms in the office of the Secretary of State within sixty days from the passage of said Joint Resolution.[72]

On the same day the General Assembly passed an act granting all lands granted to the then Territory of Iowa by an act of Congress, approved August 8th, 1846, entitled an "act

[72] Homestead Company case, pp. 82, 350:
Williams-Baker case, pp. 224, 283:
Wolcott case, reprinted in Homestead Company case, p. 394, and in Williams-Baker case p. 98:
Burr case reprinted in Homestead Company case p. 427, and in Williams-Baker case p. 154.

granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory, and all lands and compensation which should be given in extension or in lieu of any portion thereof by the General Government, and also all stone, timber, and other material turned over to the State by the De Moine Navigation and Railroad Company, in settlement with the State of Iowa, to the Keokuk, Fort Des Moines and Minnisota Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river by way of the city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnisota or St. Peter's River, excepting all the land belonging to said grant theretofore sold by the State of Iowa, or which should thereafter be conveyed to the De Moine Navigation and Railroad Company, by virtue of a settlement then pending between the State and said Company, and also so much of the said timber, stone, and other material as should be used in the completion of the locks and dams at Croton, Plymouth, Bentonsport and Keosauqua; said grant to become operative as soon as Congress should assent to or permit a diversion, or the title thereto should become vested in the State so as to be subject to grant.[73]

On the same day CHARLES MASON was appointed a Commissioner of the State with authority to do all acts necessary to secure the lands granted by the act of August 8th, 1846.[74]

On the 15th day of April, 1858, the De Moine Navigation and Railroad Company accepted the propositions of settlement proposed by the Joint Resolution of March 22nd, and instructed its President to execute the necessary and proper

[73] Homestead Company case pp. 86, 349: Williams-Baker case, pp. 231:

[74] Homestead Company case, p. 60: Williams-Baker case, p. 229:

discharges in conformity with the provisions of said resolution.[75]

On the 28th of April, 1858, the Governor of the State certified to the President, as required by the act of August 8th, 1846 :—[76]

That there has been expended from time to time, prior to the date hereof, on the improvement of said river, as the work has progressed, and the money has been required, under certain contracts made by the State of Iowa with the De Moine Navigation and Railroad Company, the sum of three hundred and thirty-two thousand six hundred and thirty-four and 4-100 dollars ($332,634.04,) and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress, approved as aforesaid, there will be conveyed to said De Moine Navigation and Railroad Company two hundred and sixty-six thousand one hundred and seven 23-100 acres (266,107 23-100) of the land belonging to said grant, and which have been certified and approved to the State of Iowa under said act for the prosecution of the improvement of said river Des Moines.

On the 30th day of April, MR. MASON notified the Secretary of the Interior of his appointment and authority under the act of the General Assembly of March 22nd ; and requested that the certification of the lands should proceed, and that the question as to the extent of the grant beyond the northern boundary of the State should remain open for further adjudication.[77]

The De Moine Navigation and Railroad Company paid to the State twenty thousand dollars, ($20,000) and conveyed to it the dredge-boat and materials as required by said Joint Resolution.[78]

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[75] Homestead Company case, p. 350 : Williams-Baker case, pp. 226, 284, 300 : Riley-Welles case, pp. 83, 164 : Wolcott case, reprinted in the Homestead Company case, p. 394, and in Williams--Baker case, p. 99 : Burr case, reprinted in Homestead Company case, p, 427, and in Williams-Baker case, p. 155.

[76] Homestead Company case, p. 352 : Williams-Baker case p. 226 : Riley-Welles case, p. 64 : Wolcott case, reprinted in Homestead Company case, p. 395, and Williams-Baker case, p. 100.

[77] Homestead Company case p. 60 : Williams-Baker case, p. 229.

[78] Homestead Company case, p. 84 : Williams-Baker case, p. 226 : Wolcott case reprinted in the Homestead Company case p. 395, and in Williams-Baker case p. 99. Burr case reprinted in the Homestead Company case p. 427, and in Williams-Baker case p. 155.

On the 3rd day of May, 1858, the Governor of the State of Iowa, executed fifteen deeds or patents in the following form, conveying to the De Moine Navigation and Railroad Company, two hundred and fifty-six thousand one hundred and seven and 23-100 (256,107,23-100) acres of land, of which about fifty-three thousand three hundred and sixty-seven (53,367) acres were below the Raccoon Fork, and the balance, two hundred and twelve thousand seven hundred and forty-one (212,741) acres were above said Fork :[79]

This indenture made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the De Moine Navigation and Railroad Company, parties of the second part, witnesseth ; that the party of the first part, for and in consideration of one dollar paid by the party of the second part, and in pursuance of the contracts and agreements, between the State of Iowa and the said De Moine Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain and convey to the said De Moine Navigation and Railroad Company, the following referred to and described lands, to-wit : (Here follows the descriptions.) To have and to hold the above described lands, and each and every parcel thereof, with all the rights, privileges, immunities and appurtenances of whatever nature thereunto belonging or appertaining, unto the said Des Mones Navigation and Railroad Company, their successors and assigns, forever, in fee simple.

In testimony whereof, I Ralph P. Lowe, Governor of the State of Iowa, have caused the Great Seal of the State of Iowa, to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above writ ten, and of the State of Iowa the 12th year.

BY THE GOVERNOR : RALPH P. LOWE.

ELIJAH SELLS, *Secretary of State.*

For the purpose of covering any tracts or parcels that might have been overlooked or omitted in said deeds, the State, on the 18th day of May, 1858, executed the following conveyance, to-wit :[80]

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[79] Homestead Company case, p. 84 : Williams--Baker case pp. 226--7, 341--59 :
Riley-Welles case, p. 28 :
Wolcott case, reprinted in Homestead case, p. 395, and in Williams-Baker case, p. 100 :
Burr case, reprinted in Homestead Company case, p. 427, and in Williams-Baker case, p. 156.

[80] Homestead Company case, p. 84 : Williams-Baker case, pp. 227, 297 : Riley-Welles case, p. 76 :
Wolcott case reprinted in the Homestead Company case, p. 395, and in the Williams-Baker case, p. 101 :
Burr case, reprinted in the Homestead Company case, p. 427, and in the Williams-Baker case, p. 155.

This indenture, made this 18th day of May, 1858, by and between the State of Iowa party of the first part, and the De Moine Navigation and Railroad Company, parties of the second part, witnesseth :

That the party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the De Moine Navigation and Railroad Company for the improvement of the Navigation of the Des Moines River in the State of Iowa ; and in pursuance of a Joint Resolution of the General Assembly of the State of Iowa, approved on the 22d day of March, 1858, does hereby sell, grant, bargain and convey to the said De Moine Navigation and Railroad Company, the following described lands to-wit : All lands granted by an act of Congress, approved August 8th, 1846, to the then territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa, by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its offices and agents, prior to the 23d day of December, 1853, under said grant, and said company or its assigns, shall have the right to all of said lands so herein granted to them, as fully as the State of Iowa could have, under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor, by the General Government, but at the costs and charges of said company ; and the State to hold all the balance of said lands, and all right, power and priviliges, under and by virtue of said grant, entirely released from any claim by or through said company ; and it is understood that, among the lands excepted and not granted by the State to said company are 25,487,87 acres lying immediately above the Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa : To have and to hold the above described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the De Moine Navigation and Railroad Company, their successors and assigns forever, in fee simple.

In testimony whereof, I Ralph P. Lowe, Governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

RALPH P. LOWE.

By the Governor,

ELIJAH SELLS, *Secretary of State.*

On the 7th of May, 1858, the Secretary of the Interior answered the letter of MR. MASON, of the date of the 30th of April, as follows : [81]

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[81] Homestead Company case, p. 61 : Riley-Welles case pp. 34. Williams-Baker case, p. 230 :

DEPARTMENT OF THE INTERIOR.

Washington, May 7th, 1858.

SIR: I have to acknowledge the receipt of your communication of the 30th ultimo, relative to the settlement of the controversy as to the extent of the Des Moines River grant.

The decision of my immediate predecessor of the 9th of June, 1856, I regard as a proposition made to the State of Iowa for a final adjustment, and your present communication is not an acceptance of the proposition on the part of the State. When it considered that nearly two years have elapsed and no formal acceptance has in the meantime, been presented here, if this be the only communication you have to make, I feel authorized to regard your letter now before me as an authoritative rejection of that proposition.

I am, sir, very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

HON. CHARLES MASON,

Agent for the State, present.

On the 10th of the same month an appeal was taken to the President, supported by a full statement of the case, with the documentary evidence, by Mr. MASON.[82]

The President, upon the appeal of the State from the decisions of Secretaries MCCLELLAND and THOMPSON, referred the matter to the Attorney General, Hon. J. S. BLACK: On the 22nd of November, 1858, he submitted to Secretary THOMPSON an opinion holding: 1. That the construction of the grant was undetermined: 2. That the act gave only a moiety of the unappropriated lands which lay within five miles of the river between its mouth and the Raccoon Fork:[83]

On the 17th of February, 1859, the Commissioner of the General Land Office, stated, in a letter to Hon. GEO. W. JONES, in reply to a petition asking that certain lands in the Fort Dodge land district, and above the Raccoon Fork, be placed in market, that the lands referred to "are withheld from market in view of the act of August 8th, 1846, to aid in the improvement of the Des Moines River."[84]

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[82] Homestead Company case, p. 61.
[83] Homestead Company case, p. 69.
[84] Homestead Company case, p. 353: Williams-Baker case, p. 231: Riley-Welles case, p. 70: Wolcott case, reprinted in Homestead Company case, p. 392, and in Williams-Baker case, p. 96.

On the 26th of March, 1859, Secretary THOMPSON transmitted to the Commissioner of the General Land Office, the opinion of the Attorney General, dated Novembnr 22nd, 1856, holding that the grant extended only to the Raccoon Fork. In this letter he said :[85]

> In the views of the Attorney General, as thus expressed, I fully concur, and it therefore only remains for me to inform you that no future action can be taken in this Department, or in your office, which will recognize the grant as extending above the Raccoon Fork of the Des Moines River.
>
> Lists of selections which have been approved by my predecessors will be respected by your office.

On the 3rd of March, 1860, the General Assembly passed an act imposing additional conditions upon the grant made to the Keokuk, Fort Des Moines and Minnisota Railroad Company by the act of March 22nd, 1858,[86]

On the 17th day of March, 1860, the General Assembly of the State of Iowa, resumed "all rights to lands, interests, rights, powers and privileges heretofore conferred or intended to be upon the Iowa Central Air Line Railroad Company, by an act approved July 14th, 1856,"[87] and on the 26th of the same month by another act it conferred the same upon the Cedar Rapids and Missouri River Railroad Company.[88]

On the 2nd of April, 1860, the General Assembly of the State of Iowa, passed an act relating to the sale of the lands selected as a part of the 500,000 acre grant but within the limits of the Des Moines River Grant, reciting that said lands in whole or in part had been conveyed to the De Moine Navigation and Railroad Company in the settlement in the above mentioned contract.[89]

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[85] Homestead Company case, p. 353 : Williams--Baker case, p. 232 : Riley--Welles case, p. 34.
[86] Homestead Company case, p. 354.
[87] Williams-Baker case, p. 34.
[88] Williams--Baker case, p. 35.
[89] Homestead Company case, p. 357: Williams-Baker case, p. 235.

On the 18th of May, 1860, the following notice was posted in the Land Offices in Iowa : [90]

No. 661. Notice respecting certain lands in the State of Iowa.

Notice is hereby given that the lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved for the time being, from sale or from location, by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual bona-fide settlers, holding under titles from the State, and to make such provisions, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May 18, 1860.*

On the 25th of May, 1860, WM. T. STEIGER, an agent of the Dubuque and Pacific Railroad Company, filed in the General Land Office a list of the lands lying within the claimed limits of the Des Moines River grant above the Raccoon Fork, and claimed to select some of them under the act of the 15th of May, 1856, as lands enuring to the State to aid in the construction of railroads : [91]

The Commissioner acknowledged the receipt of the letter and added : [92]

The tracts in said list are above the Raccoon Fork, and within the lands that had been selected under the Des Moines River grant by act of 8th of August, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant above the said fork, the present lists are presented by you. As the matter has been placed in train for congressional intervention, no action can be taken in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

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[90] Homestead Company case p. 71 : Williams-Baker case p. 232 : Riley-Welles case, p. 35: Wolcott case, reprinted in Homestead Company case, p. 395, and in Williams-Baker case, p. 102.

[91] Homestead Company case p. 71, 359 : Williams-Baker case, p. 232-3 : Riley-Welles case, p. 71 : Wolcott case reprinted in the Homestead Company case, p. 395 and Williams-Baker case p. 102-3.

[92] Homestead Company case, p. 71 : Williams-Baker case, p. 103 : Riley-Welles case, p. 71-2 : Wolcott case, reprinted in the Homestead Company case, p. 395.

On the 7th of June, 1860, the Commissioner of the General Land Office, submitted to the Secretary of the Interior a communication from the Chairman of the Committee on Public Lands in the Senate, letters written by W. T. STEIGER urging the claims of the Dubuque and Pacific Railroad Company and a letter from CHAS. MASON presenting the views of the State authorities on the subject. On the 11th of the same month the Secretary wrote the following reply to the letter of the Chairman:[93]

DEPARTMENT OF THE INTERIOR, *June 13, 1860.*

SIR: Herewith I have the honor to transmit a copy of the report of the Commissioner of the General Land Office of the 7th inst., upon Senate Joint Resolution No. 37, and the memorial relative to certain tracts of land heretofore certified to the State of Iowa, as part of the grant made to said State by the act of Congress of 8th of August, 1846, and to return all the papers submitted with your several letters of the 28th and 30th ultimo and the 1st instant.

The Commissioner has sent with his report copies of two letters addressed to him by W. T. Steiger, esq., and one by Hon. Charles Mason, agent of the State, and having reference to the lands in question, and which it appears to be proper to lay before you. The draft of a bill is also herewith enclosed, which was furnished to Hon. Jas. W. Grimes in a letter of this Department dated the 22d ultimo, of which I also enclose a copy.

In the matter of the grant for the improvement of the Des Moines River, as also adjusting the later grants for railroad purposes, the Department deals directly with the State, and not with parties claiming under her.

To a portion of the lands to which the Joint Resolution No. 37 relates, two claims under different laws of Congress have been preferred on behalf of the State.

The draft of a bill which I furnished to the Hon. J. W. Grimes contains such provisions as would enable the State to make a fair settlement with the parties who claim adversely to each other under the respective grants, but does not depart from the simple proposition that the same tracts of land have only been once granted to the same grantee.

Since my letter to Senator Grimes was prepared I have modified my views to some extent, and am now prepared to recommend the confirmation, on the basis of the Department's draft of a bill, of all the lands in contest which have been sold, granted, or conveyed by the State, and should this suggestion meet the approval of the committee, the end proposed would be attained by striking out from the first section of the bill the following words, viz, "And have been settled upon and cultivated," (see lines 9 and 10,) and inserting in their stead the words "or granted or conveyed."

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[93] Homestead Company case, p. 165: Riley-Welles case, p. 71--2: Williams--Baker case, pp. 48 55:

It will be perceived that the bill of the Department proposes a settlement between the United States and Iowa, as a condition of the confirmation of the claim of the State to the tracts that have been certified to her improperly by the Department. This plan I regard as strictly just, in view of the decision of the Supreme Court that said tracts constitute no part of the grant for the improvement of the Des Moines River.

Should Congress, however, be willing to confirm the acts of my predecessor, and relinquish to the State all title now remaining in the United States in the tracts so improperly certified, I think that legislation should be confined to that single proposition.

The Joint Resolution No. 37, now before me, uses some very general and indefinite terms. The preamble is objectionable as giving but a limited recital of facts such as have an argumentative bearing in favor of the propositions of the joint resolution.

Inasmuch as a fair recital of all the important facts would be cumbersome, I respectfully suggest the omission altogether. The second part of the resolution is, in my opinion, liable to misconstruction, and likely to give rise to controversy as to its true meaning. Its probable effect would be, should it become a law, to secure to the State more land than this Department has ever recognized as having been granted.

In addition to a confirmation of all the tracts embraced in the list certified by the Secretaries of the Treasury and Interior, it appears to contemplate the allowance of scrip or selection in all cases in which any of the lands on said lists have been otherwise "transferred," which would amount to an additional grant of so much land as is now involved in controversy between parties claiming adversely to each other, under the State of Iowa, the understanding of this Department being that the State has transferred to individuals, and an incorporated company, all the lands falling to her under the Des Moines grant, and to certain railroad companies all the lands which she will receive under the grants for the construction of railroads.

Three of the lines of the Iowa land grant roads cross the strip of country along the Des Moines River where the lands lie, which have been improperly certified under the Des Moines grant, and a large body of land is claimed under both titles.

Heretofore this Department has refused to recognize the claim under the railroad grant of May 15th, 1856, because it had approved the selections of the same lands, under an earlier grant, that of 8th August, 1846; the uniform construction of railroad grants having been that they confer nothing upon a State, either as granted in place or as a basis of indemnity selections, where they interfere with prior grants to the same State. But now since the Supreme Court of the United States has decided that the certification of the lands along the Des Moines River, above the mouth of the Raccoon Fork, has conferred no title, and that the land was no part of the Des Moines grant, the claim of the State to a large portion of the same land, under the grant for railroad purposes can no longer be called in question, and the second title saves the land embraced by it to the grantee, although the prior title is regarded as worthless.

In this state of facts, it appears to me to be sufficient for the United States to assent to a relinquishment of any title which may still remain in them to the land erroneosly certified to the State of Iowa, leaving the State and those claiming under

her, to settle the controversies which arise under the State laws, in the courts of the State.

If the State is called upon to settle with the United States, and accedes to the proposition, there appears to be some propriety in advancing to her land scrip with which to satisfy her own double grants of the same lands; but if she is not called upon for a settlement with the United States, I am unable to perceive any principle upon which more land should now be granted her, in order that she may settle with persons to whom she has twice conveyed the same tract.

As adapted to carry out this simple proposition, I have the honor to submit the following form of a joint resolution, viz: *Resolved, by the Senate and House of Representatives of the United States in Congress assembled*, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the Raccoon Fork thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8th, 1846, be and the same is hereby, relinquished to the State of Iowa.

Beyond this simple proposition, the question arising upon the joint resolution No. 37, appears to be this: Shall the United States, because of the doing of void acts by her executive officers in the Land Departments, grant more land to Iowa than she could have had, if the void act complained of, had been clothed with the full authority of law.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary*.

HON. R. W. JOHNSON,
Ch'r Com. Pub. Lands, U. S. Senate.

When the Joint Resolution recommended by the Secretary of the Interior in the foregoing letter of June 11th, 1860, was pending in the House of Representatives, Mr. TRIMBLE, of the Committee on Public Lands made the following explanation: [24]

"In 1846, the Congress of the United States made a grant of lands to the State of Iowa, to aid in the improvement of the navigation of the Des Moines River. The Secretary of the Interior certified to that State some four hundred thousand acres of land above the Raccoon Fork of that River. It has been decided by the Supreme Court of the United States that those lands were improperly certified. A subsequent grant made by Congress to the State of Iowa, for railroad purposes, covers the whole of these four hundred thousand acres, with the exception of about one thousand acres. These lands, therefore, do not revert to the Government of the United States in consequence of that decision, but are still to be retained by the State for railroad purposes. These lands have been sold to actual settlers, who have paid their money

[24] Williams Baker case, p. 56 7:

for them. They are now occupied, and there are three or four towns built upon them. There are to my knowledge lands among them worth from fifty to sixty dollars per acre. The settlers want their titles confirmed. The State sold and patented the lands to the present occupants, and all this resolution asks is, that their titles may be confirmed. This resolution is drawn up and its adoption recommended by the Secretary of the Interior."

On the 12th of June 1860, the Commissioner of the General Land Office, replied to the letter of W. T. STEIGER of the 25th of May, claiming the lands in controversy as a part of the railroad grant, declining to take any action in regard to the matter for the reason that it had "been placed in train for Congressional intervention."[95]

On the 7th of July, 1860, the Commissioner transmitted the letter of Mr. STEIGER to the Secretary of the Interior, saying:[96]

The tracts in said lists are above the Raccoon Fork and within the lands that have been selected under the above mentioned river grant.

Upon the receipt of these lists Mr. Steiger was advised that, as the matter had been placed in train for congressional intervention, no action could be taken by this office until Congress should have had time to consider and dispose of the subject.

Without passing upon, or in fact considering the question as to the right of the State under the railroad grant to these lands, which, at the date of that grant, had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter, of itself, justifies us in not recommending further proceedings by the Department, until after the close of the next session of Congress.

On the 13th of August, 1860, the Commissioner submitted to the Secretary of the Interior a proclamation for the sale of public lands. He thus describes the lands embraced in the proclamation:

This (No. 1) proclamation embraces the lands in the yellow shades on the enclosed diagram "A," also those in the blue shades. The blue shades are lands above the Raccoon Fork, which had been claimed under the Des Moines River grant before the recent decision of the Supreme Court. It does not, however, embrace any of the lands south of the blue shades and above the forks, which had been certified to the State under sanction of your predecessors, according to the then claimed limits of the Des Moines grant.

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[95] Homestead Company case p. 360:

[96] Homestead Company case, p. 360: Williams-Baker case, p. 233:

The Secretary submitted it to the President with the recommendation that it be approved. This was on the 14th of August, 1860. On the 15th he transmitted to the Commissioner the proclamation with instructions to cause the same to be published.[97]

Even numbered sections of land by their specific numbers (as 2, 4, 6, 8, 10, etc.,) had been proclaimed for sale on the 30th of May, 1859, (proclamation No. 640,) and odd numbered sections by their numbers (as 1, 3, 5, 7, 9, etc.,) were proclaimed by this proclamation, (August 4th, 1860, No. 665) in the following township along the Des Moines River, in northern Iowa, within the limits of the Des Moines River Grant:

In range	27	west,	townships.....93, 95, 96, 97 and 98
"	28	"	" .....93, 94, 95, 96, 97, 98 and 99
"	29	"	" .....93, 94, 95, 96, 97, 98 and 99
"	30	"	" 93, 94, 95, 96, 95, 96, 98, 99, 100
"	31	"	" 93, 94, 95, 96, 97, 98, 99, 100
"	32	"	" 93, 94, 95, 96, 97, 98, 99, 100
"	33	"	" 94, 96, 97 99, 100
"	34	"	" 95, 96, 97, 99, 100

In addition to these there were a few other entire townships included in each of the two proclamations.

These townships are all *north* of the lands certified to the State under the act of August 8th, 1846, and include none of the lands conveyed by the State to the Des Moines Navigation and Railroad Company.[98]

The lands in even numbered sections, south of township ninety-three (93) and within five miles of the Des Moines River and parts of odd numbered sections more than five miles from the river were proclaimed for sale on the 1st day of February, 1853, (Proclamation No. 488).[99]

On the 3rd of September, 1860, the Commissioner again

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[97] Homestead Company case, p. 361: Williams-Baker case, p. 233: Riley-Welles case, p. 35.

[98] Homestead Company case, p. 361: Williams--Baker case, p. 244.

[99] Homestead Company case, and p. 330. (See map and explanations for delineation of lands embraced in these proclamations.)

called the attention of the Secretary to Mr. STEIGERS' claim with the remark that he could "find no reason for a change" of his "recommendation of the 7th of July last." On the 6th, the Secretary advised the Commissioner to delay any action in the matter "until after the close of the next session of Congress" unless there should be a direct application by the Governor for final action.[100]

On the 3rd of November, 1860, the Secretary advised Hon. GEORGE W. JONES, Senator of Iowa, that he should continue to refuse to take any action on Mr. STEIGER'S demand unless a direct demand was made by the State authorities for a list under the act of May 15th, 1856.[101]

On the same day he wrote to the Governor of Iowa, enclosing a copy of the Joint Resolution which the Department asked Congress to pass for the purpose, as avowed by the Secretary in his letter of 11th of June, of perfecting the title to the lands which had been certified. He says in this letter:

"You thus perceive that so far as my predecessors have acted under the grant of August 8th, 1846, I was willing to recommend a confirmation of that action by Congress. I can not, however, go further."[102]

The resolution recommended by the Secretary of the Interior in his letter to the Chairman of the Committee on Public Lands, of the 10th of June, 1860, was pending in the Senate on the 21st day of February, 1861. The Congressional Globe shows the following discussion on the question of its passage:[103]

Mr HARLAN. I now renew my motion to take up House Joint Resolution No. 7c.

Mr. LANE. What is the joint resolution?

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[100] Homestead Company case, pp. 366: Williams Baker case, p. 234: Riley-Welles case, p. 72. Wolcott case reprinted in the Homestead Company case, p. 396, and in the Williams-Baker case p. 103:

[101] Homestead Company case, p. 367: Williams-Baker case, p. 234: Wolcott case reprinted in the Homestead Company case, p. 396, and in the Williams-Baker case, p. 103.

[102] Homestead Company case, p. 368: Williams-Baker case, p. 236: Riley-Welles case, p. 57:

[103] Williams-Baker case, p. 57: Extract from Debate in the United States Senate, Feb. 22nd, 1861, (Cong. Globe Pt. II, 2nd Less. XXXVI Congress, p. 1130.)

Mr. HARLAN, A joint resolution to quit title to lands in the State of Iowa.

MR. GREEN. I hope that it will not be taken up now. It involves a great deal more than would be supposed from its face. It involves five or six hundred thousand acres of land.

Mr. HARLAN. It will appear from the reading of the report of the House committee, that the Senator from Missouri is entirely mistaken. It involves the title to but a very small quantity of land that would not be conveyed to Iowa under other grants. My colleague and myself do not propose to debate the question, but we desire to have a vote.

The motion was agreed to, and the joint resolution (H. R. No. 70) to quit title to lands in the State of Iowa, was considered as in committee of the whole. It proposes to relinquish to the State of Iowa all title which the United States still retains in the tracts of land along the Des Moines River and above the mouth of the Raccoon Fork thereof, which have been heretofore certified to the State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8, 1846.

Mr. GREEN. I regard it as my duty to make a little explanation of this joint resolution. The title of it reads, "A joint resolution to quit title." Such a title to a bill or joint resolution I have never seen before. "Quit title!" It means to surrender all the title the Government of the United Sates has. Now, I will give the Senate a little history of this Des Momes grant.

In 1846, the first grant was made to make a slack water navigation on the Des Moines River, from its mouth to the Raccoon Fork. About sixty miles that river makes a common boundary with the State of Missouri; and if the slack water navigation had been made according to the terms of the grant, Missouri, having a town at the mouth, and being contiguous for about sixty miles, would have participated largely in its benefits. But instead of that they went to work, and every superintendent who has touched it has become immensely rich; the lands granted have been wasted away, and the navigation of the Des Moines is absolutely injured. Instead of coming down to the mouth, when they got down to St. Francisville they undertook to cut a canal, and diverge from the Des Moines River around to the town of Keokuk. That was in violation of the true intent and purpose of the grant. Next, the question came up, how much land passed under that grant? Mr. Stuart, according to my recollection—or perhaps it was Mr. Ewing, I am not certain which—decided that it went up to the northern line of the State; and a small portion of land was certified to it lying north of the Raccoon Fork. The language of the grant is so express that I do not see how any one could misunderstand it. That grant extended only to the terminus of the improvement. The terminus of the improvement was the Raccoon Fork. Iowa was again dissatisfied, and claimed it up to the source of the river, up into the State of Minnesota. The Des Moines river rises in Minnesota, and Iowa claimed the land all the way up to the head spring of the river. Mr. THOMPSON, Secretary of the Interior, said he was willing to abide by the act of his predecessor, if Iowa would be content with it. Iowa said she was not content, and insisted on going to the head springs of the river, away up into the State of Minnesota, where

no navigation could possibly be had of the river. An agreed case was made. The Secretary of the Interior, said: "If you will take the question before the Supreme Court of the United States, I will make my decision conform to the decision of the Supreme Court." They brought up the case and Judge Mason argued it. It was decided by the Supreme Court that the grant did not go one inch above the Raccoon Fork, which is about the midddle of the State of Iowa. There it ends.

Now, the object is, to get the lands lying above the Raccoon Fork. If it goes up to the State line, it will be about four hundred and fifty thousand acres. If it goes up to the source of the river, it will be about six hundred thousand acres. That is the case we are acting on. It is true, I would rather let Iowa have the land than throw it away in useless homesteads; but the true policy of the Government is, to administer the lands in that manner which will best promote the public interests; and I think that this is not a fair mode of disposing of the public lands. I am willing that Iowa should have, and she now has, the alternate sections on each side of the river, six miles in width, up to the Raccoon Fork.

There is another difficulty. North of the Raccoon Fork land grants have been made to railroad companies, running east and west from the Mississippi River, across to the Missouri. Under the decision of the Supreme Court, the original grant did not include anything north of the Raccoon Fork. These railroads do cross north of the Raccoon Fork; and grants have been made in good faith, permanent and binding to those railroad companies. They can hold them, therefore, in spite of the United States; and I do not want to be engaged in the folly of undertaking to say I will quit claim where there is no title. Wherever these lands fall within the limits of railroad grants, we have no title; and wherever they are outside of those railroad grants, Iowa has no right to them. That is an end of the case.

MR. HARLAN. As an answer to the speech of the Senator from Missouri, I ask the report of the House committee may be read. The Secretary read as follows:

"The Committee on Public Lands, to whom was referred the bill, 'for the relief of the State of Iowa and for other purposes,' beg leave to report:

"That, by the act of Congress of August 8th, 1846, the alternate sections, in a strip ten miles in width, lying along the Des Moines River, were granted to the State of Iowa, to aid in improving the navigation of the said river from its mouth to the Raccoon Fork. This grant was made on certain conditions, which were assented to, and the State undertook the execution of the trust.

"Not long afterward, doubts were raised as to the extent of the grant; whether it was limited to lands lying below the mouth of the Raccoon Fork, or whether it extended to the source of the river. The question was carried before the then Secretary of the Treasury, who decided, on the 2d of March, 1849, in favor of the more extended grant, and the State proceeded to plan the work in correspondence with the means thus provided for its execution.

"After the lapse of something more than a year, the same question was again raised. The Secretary of the Interior, before whom the matter was brought, held that the grant did not extend above the Raccoon Fork; but, after an appeal had been carried before the President, and twice referred to two different Attorney Generals,

by whom the subject was carefully considered, it was determined, on the 29th of Oct. that the claim of the State should be allowed, and that the land should be certified which lay above the Raccoon Fork. Within two years from that date above four hundred thousand acres of land lying above the Raccoon Fork were certified to the State by the Interior Department. This land has all been sold by the State, and the proceeds applied to the improvement of the Des Moines River, in compliance with the conditions of the grant. A large proportion of these lands are now occupied by actual settlers, all holding under patents from the State, which are founded on certificates from the Secretary of the Interior.

"Within the past year the Supreme Court of the United States has decided against the construction put upon the act of August, 1846, by the Secretaries of the Treasury and Interior, and the Attorney General, that the titles by which the lands are now held are wholly negatory; and that, notwithstanding the certificates and sales, they would still remain the property of the United States. But on the 15th of July, 1856, Congress made another grant of land to the State Iowa, to aid in the construction of certain railroads herein specified. This grant covers all but about one thousand acres of the same land which had been certified and sold under the act of August, 1846, and is therefore beyond the reach and control of the Government of the United States. That portion not covered by the grant of July, 1856, would revert to the United States; but in the judgment of your committee, it would be an act of gross injustice for this Government to repudiate the acts of its own highest officers, and thus deprive those persons of their possessions who have paid their money on the faith of the Government. They propose, however, nothing more than a relinquishment of the title held by the United States in the lands which have been certified by the Secretary of the Interior, under the Des Moines River grant, and afterwards sold to *bona fide* purchasers. For this purpose your committee reccommend the adoption of the following Joint Resolution, proposed and approved by the Secretary of the Interior."

MR. GREEN. I believe that is the report of the committee of the House of Representatives; not of the committee of the Senate.

MR. HARLAN. It is the report of the House Committee on Public Lands.

MR. GREEN. The committee of the House of Representatives are a little at fault. They undertake to say that we cannot repudiate the act of our own officer. Iowa repudiated it; would not stand by it, and claimed the land up to the source of the river. Then the Secretary said: "I will re-open the case and submit it to the court."

MR. GRIMES. The Senator from Missouri is mistaken, I think. Mr. Robert J. Walker, when he was Secretary of the Treasury, some three or four days before he left that office, the Land Department then being under his general superintendence, decided that this grant extended to the source of the river, and that was the first decision that was ever made by any of the Departments here on the subject. Upon the strength of that decision, the Government of the United States has certified to the State, or, in other words, conveyed (for that is the manner in which the United States adopt in conveying their lands) these lands to the State; and the State has sold to settlers and to others, I think, every foot of the lands. Now, all that this Joint Res-

olution proposes is, that the Federal Government shall confirm, or, in the language of the resolution, "relinquish" to the State those lands, and those lands only, that have heretofore been certified by its own officers as belonging to the State, and which the State, placing implicit confidence in that certificate, has conveyed to third parties for a valuable consideration.

MR. GREEN. The Senator is a little mistaken. Mr. Robert J. Walker, who was then Secretary of the Treasury before the Interior Department was created, had charge, but he took no action, except to give an opinion; and when the Department of the Interior was created, I think it was first put under Mr. Thomas Ewing, and he decided when the question was brought before him, against this claim. He said the grant only went to the State line.

MR. GRIMES. Who did?

MR. GREEN. Mr. Ewing.

MR. GRIMES. Yes.

MR. GREEN. And so did Mr. Stuart.

MR. GRIMES. But Mr. Johnson, when he was Attorney General, decided that it went to the source of the river. We had conflicting opinions. Mr. Crittenden, when he was Attorney General, decided that it only went to the Raccoon Fork.

MR. GREEN. Mr. Crittenden was right. He decided according to the law.

MR. GRIMES. I think so, myself; I think the grant originally never extended above the Raccoon Fork; but the grant was construed by your own authorities as extending to the source, and we acted upon it; we acted upon your decision in good faith; we received the certificates; we have conveyed the land for a valuable consideration, and now we only ask you to indemnify us for what we have done. My own individual opinion is, that the grant originally did not extend above the Raccoon Fork.

MR. GREEN. There is no difficulty at all about this. The law is very clear. It only went to the Raccoon Fork. The Supreme Court has so decided. Attorney General Crittenden has so decided. All these, however, were nothing but opinions, except the judgment of the court; and that was on an agreed case made between the State and the Secretary of the Interior, Mr. Jacob Thompson. He was willing to stand by what Mr. Stuart did, and to say that it might go up to the northern line of Iowa, but not into Minnesota. Now, so far as the grant to those lateral roads running through it are concerned, we can not interfere with them.

MR. GRIMES. They have not been certified as belonging to the State under that grant.

MR. GREEN. Yes, sir.

MR. GRIMES. No, sir; not a foot of them, as I understand.

MR. GREEN. Yes, sir; some of them were certified before the railroad grant was made, so that there is a conflict between claimants, even if we make this quit-claim, as it is called. Now, I am willing to go thus far. Iowa has sold lands that she had no right to; I do not want to interfere with the private citizens; I will not interfere with public grants; but to the extent that it affects private citizens, and does not interfere with public grants, I am willing to go. I am not willing to cover all this immense tract, to grant this immense amount of land, equal to six hundred thousand

acres—in addition to what they have already received, up to the mouth of the Raccoon Fork.

Mr. POLK. My colleague will allow me to interrupt him. Perhaps an amendment which I propose to offer will meet his views; to insert the words:

"And by the said State sold to actual settlers."

Mr GREEN. Say "and not interfering with any other public grant."

Mr. GRIMES. What is that amendment?

Mr. POLK. To insert:

"And by the said State sold to actual settlers."

Mr. GRIMES. If the Senator will change it so that it shall apply to any purchaser, or any grantee of the State of Iowa, it will be entirely satisfactory.

Mr. POLK. The only objection to that is, that I do not like to give this congressional bounty to land speculators.

Mr. GREEN. That is just what it is.

Mr. POLK. But to the actual settlers I am willing to give it.

Mr. GRIMES. It would cost a great deal of trouble for as to determine who happened to be actual settlers at any particular date, or at the passage of this resolution, or whether it should apply to those who are actual settlers now, or those who were actual settlers at the time they purchased.

Mr. GREEN. All that can be guarded by saying, "any actual *bona fide* settler, who, or whose grantor, actually settled on the land."

Mr. GRIMES. The man who, by virtue of your own action, the action of your own officer, went there and obtained the land, if he be not an actual settler, is morally and politically, and in every way, just as much entitled to receive justice at the hands of the Senate as the man who is an actual settler. He is a *bona fide* purchaser. If the Senator will insert the words, "any *bona fide* purchaser from the State of Iowa," I shall be satisfied.

Mr. POLK. The objection to that is that it would shut out the speculators.

Mr. GREEN. The only objection to that is this: That rich grant of land, the best body of land in the west, was fooled away to a New York company, who never performed the work, but have actually, by the construction of their dams, injured Missouri. They first applied to the State of Missouri to give them leave to build their dams to our bank, and we gave them leave. They then constructed them so that the overflow of water would wash right in and destroy private property, and thousands on thousands of dollars have been destroyed by the misconstruction of this work. Again: Every dam built and every lock put down, is a greater obstruction to navigation than if it had not been done. I want another condition put in; and if we do give them this land, I want the State of Iowa to remove all these obstructions, and leave the river as it was. This New York Company have a speculation on hand. They want to claim that they are *bona fide* purchasers; but I want actual, resident, citizen purchasers.

Mr. HARLAN. It would be unjust, in my judgment, to adopt the amendment suggested by the Senator from Missouri, Mr. Polk. I wish to state an important fact, which I think is misapprehended by the other Senator from Missouri, (Mr. Green.)

The State of Iowa did, as he suggests, claim about twelve hundred thousand acres of land under this original Des Moines grant, lying above the Raccoon Fork of that river; but much less than one-fourth of that amount was certified to the State by the officers of the General Government. So far as this land has been certified to the State, the State has accepted the land, and attempted to apply the proceeds of the grant in the improvement of the river. A part of this land has been sold by the State directly to actual settlers. A part of the grant has been sold to the gentlemen who were applying their money in putting in locks and dams, to which reference has been made, and they, in turn, have sold to other parties. Some of them, perhaps, are not improving the land; but many of them are actual settlers. The purpose of the amendment he proposes, is to cut out all those who may have bought those lands of the De Moine River Improvement Company. That would be unjust to the company, and unjust to the purchasers from the company. All that we claim is, that the General Government shall quit-claim to Iowa the amount of lands conveyed to Iowa by the officers of the General Government, although as alleged, wrongfully conveyed, or without sufficient legal ground. We do not claim one acre above the Raccoon Fork, which has not been certified to the State; and the whole amount as I understand, is one-fourth less than is claimed by the State, and for which she derived a clear title under the original Des Moines grant.

Mr. POLK. The view I take of it is this: There is no claim in law or in equity against the United States for the granting of this land; but I am willing that the United States should relinquish the title where an actual settler has bought the land and gone on it; but I am not willing to do that favor to persons who have bought as speculators. Where persons have bought for actual settlement, and have gone on the land, I am willing to vote to relinquish to them, and I am willing to vote for the bill with that amendment. I will offer the amendment, and take the sense of the Senate upon it, to insert the words "and by the said State sold to actual settlers, and not interfering with public grants."

Mr. DOOLITTLE. I will move an amendment to the amendment, and then I think I shall sustain it—"by the State or grantee of the State to any actual settler."

Mr. GREEN. That is the same thing. It is already implied.

Mr. DOOLITTLE. I think not. It says "sold by the state to actual settlers."

Mr. POLK. As I understand, that is to include any grantee of the State.

Mr. DOOLITTLE. Some person may, *bona fide*, have purchased the land from this company.

Mr. POLK. I have no objection. I will accept that amendment.

THE PRESIDING OFFICER. The amendment to the amendment is accepted; and the question will be on the amendment proposed by the Senator from Missouri, as modified.

Mr. CRITTENDEN. I will suggest to the gentlemnen, as there is some difficulty about the provision in reference to actual settlement, to say, "all *bona fide* purchasers deriving title under the State." It seems to me that would cover everything.

Mr. GRIMES. That will be entirely satisfactory to me. It seems to me to be just to all parties. I understand it is satisfactory to the Senator from Missouri.

MR. POLK. I agree to it.

MR. JOHNSON, of Arkansas. Mr. President, I do not care what course is taken in reference to the amendment, nor do I feel any personal interest in this matter at all. The Joint Resolution certainly covers a very large amount of land; and I feel it my duty to make a statement to the Senate in regard to what has transpired with reference to it. This is a very large grant of land that is now proposed to be made to the State of Iowa, and it is a pure, entire, unmixed donation. It is without any consideration at all. I forget how much it is; but it is stated at six hundred thousand acres by some. It seems to me that is more than it is; but it is a very large amount at any rate. I forget now the precise amount. This matter was considered under a law of the United States granting alternate sections for the improvement of the Des Moines River, by one of the Departments, and under the extraordinary pressure that was brought upon the Department by our friend, no longer a member of this body, (Senator Jones) and such a pressure as scarcely any other Senator could bring upon any department of the Government, they obtained a wrong decision here which ran the grant above the Raccoon Fork for hundreds of miles. They obtained that decision, and under it got certificates to the State of Iowa to that effect; but the subject has since been before the courts, and the courts have decided that the law makes no such grant at all. That decision of the court sustains a decision which was rendered, I believe, by a Senator now here from Kentucky, (Mr. Crittenden;) and the whole of the grant itself is purely gratuitous upon our part, if the decision of the Supreme Court is at all correct.

Now this matter here seems to be mixed up with actual settlers, with speculators, with conflicting interests under grants that we ourselves have made of railroad land. I think it had better be left without any legislation at all from us, at least in this direction; and so the Committee on Public Lands seem always to have regarded it. It never was reported back from the Committee on Public Lands, until very recently; and I have no idea, if I had been present in the committee at that time, that it would have been done then. I do not belive it could have been carried, I never saw the day in the Committee on Public Lands when this measure could get the sanction of that committee. I regard the whole thing as wrong, as an attempt to make us responsible for wrong acts that were brought about by the personal influence of the representatives of the State, for which it is now sought to make the Government of the United States responsible; and out of which it is attempted to create a title such as compels us to render to them the legal title.

Without any intention, Mr. President, to interfere with this matter any further, with no disposition to make any factions opposition to the Joint Resolution—for I do not care one cent which way it goes—but simply in the discharge of my duty as chairman of the committee, I state to you my conviction, for myself, and I believe the majority of the committee, that this thing is all wrong, and no part of the resolution ought to be passed at all.

THE PRESIDING OFFICER. The Secretary will read the amendment as now modified by the Senator from Missouri.

The Secretary read it, to insert in line nine, after the word "six" the words "and

which is now held by *bona fide* purchasers under the State of Iowa ;" so that the resolution will read :

"That all title which the United States still retain in the tracts of land along the Des Moines River and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been heretofore certified to said State improperly, by the Department of the Interior, as part of the grant by act of Congress, approved August 8th, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

The amendment was agreed to.

The Joint Resolution was reported to the Senate as amended ; and the amendment was concurred in, and ordered to be engrossed, and the resolution to be read a third time.

Mr. HUNTER. I desire to have the yeas and nays on the passage of the Joint Resolution.

The yeas and nays were ordered ; and being taken, resulted—yeas 30, nays 7, as follows :

YEAS—Messrs. Anthony, Bigler, Bingham, Bright, Chandler, Clark, Collamer, Crittenden, Dixon, Douglass, Durkee, Fessenden, Fitch, Foot, Foster, Grimes, Johnson of Tennessee, Lane, Latham, Morrill, Nicholson, Polk, Powell, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson,—30.

Nays—Messrs. Bragg, Doolittle, Green, Hunter, Johnson of Arkansas, King, and Sebastian—7.

So the Joint Resolution was passed.

Mr. LANE subsequently said : I rise to a privileged question ; I move to reconsider the vote upon the passage of the House Joint Resolution quit-claiming to Iowa the Des Moines grant. I want to say to Senators who feel an interest in the Joint Resolution, that I do it in all kindness. I have heard some suggestions, in relation to the report and the facts, that perhaps I had not very carefully examined, I examined the papers to some extent, and made up my mind that the Joint Resolution was right; but on hearing some suggestions, I have concluded to make this motion, that I may have an opportunity—and I shall not lose much time in doing it—to look over all the papers and facts connected with the subject.

THE PRESIDING OFFICER, (Mr. Foster in the chair.) The chair will state to the Senator from Oregon, that the resolution to which he refers is not in possession of the Senate. It has been sent to the House of Representatives.

Mr. LANE. Then I believe it is competent to move that the House of Representatives be requested to return the Joint Resolution.

THE PRESIDING OFFICER. The usual motion is, to direct the Secretary to request the return of the Joint Resolution.

Mr. LANE. I make that motion.

THE PRESIDING OFFICER. It is moved that the Secretary of the Senate be directed to request the House of Representatives to return the Joint Resolution indicated by the Senator from Oregon.

The motion was agreed to.

On the 2nd of March 1861, Congress passed the following Joint Resolution :[104]

"*Joint Resolution to quit title to lands in the State of Iowa.*"

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly, by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

Approved March 2, 1861.

III.

On the 7th of April, 1862, the General Assembly of the State of Iowa by an act, instructed the Governor to refuse to certify to the Secretary of the Interior the completion of any portion of said Dubuque and Sioux City Railroad :—[105]

"Until said company shall have executed a deed of release of all the swamp and overflowed lands now approved, or that may be hereafter approved by the surveyor general, in any county within the fifteen mile limits of said road, to the county in which such swamp and overflowed lands may be situated, including all such swamp or overflowed lands as were returned and certified to the General Land Office, and ratified to the State by act of Congress of March 3, 1857, nor until said Dubuque and Sioux City Railroad Company shall transfer their interest in those tracts of land in Webster and Hamiltion counties, heretofore sold by John Tallman, school fund commissioner of Webster County, within the fifteen mile limits of the grant of said road (whether the same are held by patents from the State, or contracts made with said commissioner,) to the register of the State land office, in trust, to enable said register to carry out and perform said contracts in all cases where he is called upon by the parties in interest to do so, before the first day of January, A. D. 1864, (after which day he is authorized and required to reconvey those tracts aforesaid not demanded or claimed as aforesaid at that time, to said railroad company,) nor until the said Dubuque and Sioux City Railroad Company shall execute deeds of release to the State of Iowa of all lands sold by the State prior to the 7th day of May, A. D. 1854, of the odd sections above the Raccoon Fork of the Des Moines River, within five

[104] Homestead Company case, p. 368 : Williams–Baker case pp. 26 and 236 : Wolcott case, reprinted in Homestead Company case, p. 396, and Williams–Baker case, p. 104 : Burr case, reprinted in the Homestead Company case, p. 428, and in the Williams–Baker case, p. 156.

[105] Homestead Company case, p. 93.

miles of said river, and of such other of said lands as have been sold since that date and prior to the 1st day of January, A. D. 1862, and now improved and occupied by actual settlers residing thereon, who have purchased the same in good faith, not exceeding, however, one hundred and sixty acres to any one land settler."

On the same day it passed a Joint Resolution instructing the Senators and requesting the Representatives of the State in Congress to obtain [106]—

The passage of an act or resolution granting or confirming to the State of Iowa all of said river lands to the north line of the State of Iowa, to be used by the State in paying the past claims assumed by the State against the Des Moines River Improvement, and in building a railroad along said river, provided no such act shall in any manner apply to any lands heretofore granted to the State for railroad purposes, or for any other purposes whatever."

On the 10th of April, 1862, Secretary SMITH wrote as follows to the Commissioner of the General Land Office: [107]

DEPARTMENT OF THE INTERIOR.

Washington, April 10th, 1862.

SIR: In answer to your communication of the 18th March last, making certain inquiries respecting the proper disposition of lands in Iowa, granted to the State by act of Congress of 15th May, 1856, and by joint resolution, approved March 2, 1861, I am of opinion that they are to be disposed of as said act and resolution direct, without any regard to the act of August 8th, 1846, referred to in your letter.

It appears that the action of this Department in construing the last named act has been in no respect uniform; not sufficiently so to form a precedent for its present direction; and if it had there are now other considerations which will control its action. The Supreme Court has decided, in the case of the Dubuque & Pacific Railroad Company vs. Litchfield, (23 Howard, page 66,) that the act of 8th August, 1846, did not cede any lands to the State above the Raccoon Fork, and the beforementioned Joint Resolution declares that the lands above the Raccoon Fork were improperly certified as a portion of the grant of 8th August, 1846.

It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8th, 1846.

After completely satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of Raccoon River as were certified under the supposed grant of August 8th, 1846, and which the State of Iowa

[106] Riley-Welles case, p. 109:
[107] Homestead Company case, p. 73: Williams-Baker case, p. 237: Riley-Welles case, p. 125: Wolcott case, reprinted in the Homestead Company case, p. 396, and in Williams--Baker case, p. 104.

had sold to bona fide purchasers prior to the 2d March, 1861, will be also certified to the State of Iowa.

The act of 15th May, 1856, granting lands to the State for railroad purposes, excepts such lands as the rights of pre-emption have attached thereto. This last remark is made because it affects the case of Cilly, and, may be, others claiming pre-emption on said lands.

Very respectfully, your obedient servant,

CALEB B. SMITH, *Secretary*.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

This was the first decision of the Department of the Interior, or of any of its officers, holding that the lands which were situated above the Raccoon Fork and which had been certified to the State as a part of the grant of August 8th, 1846, prior to the passage of the act of May 15th, 1856, enured to the State under the last named act.

On the 15th of April, 1862, the Commissioner addressed to Hon. JAMES W. GRIMES, United States Senator from Iowa, the following letter :[108]

GEENRAL LAND OFFICE,

April 15th, 1862.

SIR : I have the honor to enclose herewith a copy of the decision of the Secretary of the Interior, of the 10th inst., in the case submitted to the Department in our letter of the 18th ult., a copy which was furnished you in a letter of the same date.

Pursuant to said decision it is proposed to make out the lists of lands enuring to the State for railroad purposes, under the act of 15th May, 1856, in so far as the 6 and 15 miles limits of certain routes under that grant traverse the region which had been claimed by the State of Iowa, under the act of 8th August, 1846, for the Des Moines River Improvement, above the Raccoon Fork, irrespective of the certified lists to the latter, which are held to be invalid under the decision of the Supreme Court of the United States, at its December term, 1859.

With great respect, your obedient servant,

J. M. EDMUNDS, *Commissioner*.

Hon. J. W. GRIMES, *U. S. Senate*.

On the 6th of May, 1862, the Governor of Iowa replied to this letter, notifying the Department that these lands had been sold by the State—some as lands selected as a part of the

[108] Homestead Company case, p. 74 : Williams-Baker case, p. 238 : Wolcott case, reprinted in Homestead case, p. 396, and in the Williams-Baker case, p. 105.

500,000 acres grant, and others as granted by the act of August 8th, 1846, and that the State reserved its right to "reclamation on the United States in case the State suffers loss by reason of the failure of the title conveyed by this State under the certificates of the United States."[109]

On the 26th of June, 1862, the Commissioner of the Land Office addressed to the Governor of Iowa, the following letter:[110]

GENERAL LAND OFFICE, *June 26th*, 1862.

SIR: The attention of this office has been called to the condition of the lands in the region of the Des Moines River, above the mouth of the Raccoon Fork, which were claimed by the State of Iowa under the act of the 8th of August, 1846, for the improvement of said river:

1st. The act of 1846, by the decision of the Supreme Court of the United States, at its December term, 1859, is restricted to the lands lying below the mouth of the Raccoon Fork, and the claim of the State to all lands lying above that point as abnegated.

2d. Under the decision of the Supreme Court the Secretary of the Interior has held that the alternate odd-numbered sections falling within the six and fifteen mile limits of the railroads, where they traverse the region of the Des Moines River above the mouth of the Raccoon Fork thereof, would enure to the State under the act of 15th May, 1856, to aid in the construction of said roads.

3d. The joint resolution of Congress of the 2d March, 1861, declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by Congress, approved August eight, eighteen hundred and forty-six, and which is now held by bona fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

To enable us properly to act in the matter, in view of the aforesaid decision and resolution, I have to request that you will furnish this office with a list of the tracts of land therein referred to, "held by bona fide purchasers of the State of Iowa," on the 2d of March, 1861, certified under official seal, specifying in each case the date of sale, name of purchaser, consideration, and date of patent or deed of conveyance by

[109] Homestead Company case, p. 74: Williams-Baker case, p. 238: Wolcott case, reprinted in Homestead case, p. 396, and in Williams-Baker case, p. 105:

[110] Homestead Company case pp. 74-75: Williams-Baker case, pp. 238: Riley-Welles case pp. 70. Wolcott case reprinted in the Homestead Company case, p. 397, and in the Williams-Baker case, p. 106:

the State, with all the essential particulars connected with the transaction. This information is requested at your earliest convenience.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

To his excellency GOVERNOR OF IOWA,
Des Moines, Iowa.

The act of Congress entitled "an act confirming a land claim in the State of Iowa, and for other purposes" was approved on the 12th of July, 1862. We copy it entire :[111]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8, 1846, is hereby extended so as to include the alternate sections (designated by odd-numbers) lying within five miles of said river, between the Raccoon Fork and the northern boundary of said State; such lands are to be held and applied in accordance with provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22, 1858, and if any of said lands shall have been sold, or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under the Joint Resolution of March 2, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof; *Provided,* That if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid.

Approved July 12, 1862.

This grant was accepted by a Joint Resolution of the General Assembly of the State of Iowa on the 13th of the following September. On the same day the General Assembly by act provided for the appointment of a Commissioner "to do and perform whatever duty may be necessary to perfect the selection of the lands granted to the State by the act of Congress," and further declaring that "the lands shall be held by the State in trust for the purposes for which it was granted to the State."[112]

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[111] Homestead Company case, p. 369: Williams-Baker case, pp. 26, 242.

[112] Homestead Company case, p. 370.

IV.

On the 25th of September the Commissioner of the General Land Office called the attention of the Governor to his letter of the 26th of the preceding June, and again requested him to "furnish—[113]

"This office, at your earliest convenience, with a list of the tracts of lands sold by the State of Iowa under the act of Congress approved August 8th, 1846, above the mouth of the Raccoon Fork of the Des Moines River, and now held by *bona fide* purchasers, and request compliance therewith as early as practicable."

In response to the foregoing letters of the Commissioner, the governor of Iowa, on the 20th of November, 1862, caused to be forwarded to the General Land Office, a list, certified by the said governor and by the Register of the Land Office of said State, under the official seal, of all the lands situated above the Raccoon Fork of the Des Moines River which had been certified and approved to the State under said act of August 8th, 1846, and also setting forth that all of said land had been sold and conveyed by said State by deed or patent prior to said 2nd March, 1861, as follows:

List of Des Moines River lands above the mouth of the Raccoon Fork sold by the State of Iowa.

Then follows list of about 697 individual sales, as follows:

Dates of patents.	*No. of patents.*
Feb'y 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
Sept. 1, "	13
Oct. 1, "	1
Mar. 14, 1859	5
April 9, "	3
" 20, "	2
May 23, "	18
" 31, "	44
July 12, "	1
Feb'y 25, 1860	1
	697

Example.						Date.	
W. ½ of N. W. ¼ }	S.	T.	R.	Ac.			
N. E. ¼ of N. W. ¼ }	19	78	24	122.83	at $1 25	March 25, 1852. Phineas C. Casidy Patented Feb'y 16, 1853. No. 2,855.	

[113] Homestead Company case, p. 370: Riley-Welles case, p. 77: Williams-Baker case, p. 239:

Immediately follow certified copies of the Joint Resolution of the General Assembly, approved March 22, 1858, and resolutions of acceptance of the De Moine Navigation and Railroad Company of 15th April, 1858, signed by R. S. Burrows, President De Moine Navigation and Railroad Company, certified as a true copy by Elijah Sells, Secretary of State, and above set forth.

Then follows a list embracing all lands which had been conveyed by the deeds of the State of Iowa to the De Moine Navigation and Railroad Company, set out above and executed pursuant to the settlement of 1858, which list was in the following form :

Parts of sec,	Sec.	T.	R.	Acres	Date of sale.	To whom sold and patented	Date of patent.	No. of patent.
					May 14, 1855	De Moine N. & R. R. Co. .	May 3, 1858.	19
					Do.....	.....do.....	.....do	10
					Do.....	.....do.....	.....do	11
					May 6, 1856	.....do.....	.....do	9
					Do.....	....do.....	.....do	11
					Do.....	.....do.....	.....do	12
					Do.....	.....do.....	.....do	13
					Do.....	.....do.....	.....do	112
					Do.....	.....do.....	.....do	13
					Do.....	.....do.....	.....do	14
					No date	.....do.....	.....do	14
					May 14, 1856	.....do.....	.....do	9
					May 6, 1855	.....do.....	.....do	9

(Here follows a copy of the general deed from the State of Iowa to the De Moine Navigation and Railroad Company, dated May 18th, 1858, above set forth.)

The said list embraced all the lands situated above the Raccoon Fork, mentioned in the patents from the State to said company, including those in question in this suit, and from said list it appears that all the sales to the De Moine Navigation and Railroad Company were made prior to the date of the Railroad grant of May 15, 1856. This list, as appears by indorsement thereon, was received and filed at the General Land Office, December 1, 1862.

Annexed and appended to said list are the following certificates of A. B. MILLER, Register of the State Land Office, and SAMUEL J. KIRKWOOD, Governor of Iowa.)[114]

STATE LAND OFFICE, IOWA,
Des Moines, July 22 1862.

I. A. B. Miller, register of the State land office for the State of Iowa, do hereby certify that the within and foregoing lists are true and full exemplifications of the sales and records of patents made out for the "De Moine River grant," in land certified to the State of Iowa, under the act of August 8th, 1846, for the "improvement of the navigation of the Des Moines River," as shown by the records and plats now on file in this office, giving description of the lands sold, the amount paid therefor, "date of sale," "name of purchaser," to whom patented, date and number of patent—except a part of that sold to the De Moine Navigation and Railroad Company, the date of which sale is not in this office, but the dates of the patents are shown—and the consideration of this latter class of lands was work upon the improvement of the Des Moines River, upon which the navigation company took lands at $1.25 per acre. These lists include all lands heretofore certified to the State, under the act of 1846, above the mouth of the Raccoon Fork, and includes a copy of a deed made out to the "De Moine Navigation and Railroad Company," for all these lands to which the State of Iowa had any title.

In testimony whereof I have hereunto set my hand the date above written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE, IOWA,
Des Moines, July 22, 1862.

I, Samuel J. Kirkwood, Governor of the State of Iowa, do hereby certify that the above named A. B. Miller was duly elected and qualified register of the State Land Office; that he is, by the laws of the State of Iowa, the custodian of all books and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is entitled to full faith and credit, and that the above is his genuine signature.

In testimony I have hereunto set my hand and caused the great seal of the State of Iowa to be hereto affixed, the date above written.

[L. S.] SAMUEL J. KIRKWOOD.

By the Governor:

ELIJAH SELLS,
Secretary of State.

The situation was submitted by the Commissioner of the

[114] Homestead Company case, p. 371: Williams–Baker case, p. 239: Riley–Welles case, pp. 141, 181: Wolcott case, reprinted in Homestead Company case, p. 397, and in Williams–Baker case, p. 107.

General Land Office to the Secretary of the Interior, in the following letter:[115]

GENERAL LAND OFFICE, *February 23d, 1863.*

SIR: Herewith I have the honor to lay before you a map exhibiting that portion of the route of the Des Moines Improvement interest, as claimed, north of the Raccoon, under the original grant by act of 8th of August, 1846, vol. 9, page 77; and also the lines of three railroads which traverse the same from east to west, in virtue of the railroad grant to that State by act of 15th of May, 1856, vol. II, page 9, and, in reference to the matter, respectfully submit the following:

1st. Under a construction given to the said Des Moines grant of 8th of August, 1846, there was certified, conditionally, by your predecessors, tracts above the Raccoon Fork, amounting in aggregate to, acres..... 271,572.24

But, in the case of the Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard, the Supreme Court settled the principle whereby the Des Moines Improvement claim above the Raccoon Fork, under said act of 8th of August, 1846, was set aside and rejected.

2d. The State of Iowa thereupon came forward, under the railroad grant, by act of 15th of May, 1856, vol. II, page 9, and selects, of the same lands mentioned under the first head, the quantity of, acres..... 202,509.44

Leaving an area of said Des Moines selections not interfered with by railroads of, acres..... 69,062.80

The railroad selections thus made, and entered in lists Nos. 33 to 42, inclusive, herewith, embrace "sections in place" and "indemnity" selection for the "Dubuque and Sioux City," the "Iowa Central Air-line," the "Mississippi and Missouri Railroads," according to Schedule B herewith.

The conflict of these railroad selections with the Des Moines was presented to your predecessor in report dated March 18, 1862, in connection with the Joint Resolution approved March 2, 1861, (Statutes, 1860-1, page 251,) which declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8th, eighteen hundred and forty-six, and which is now held by the *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

Secretary Smith, upon said report, ruled, under date 10th of April, 1862, that "such of the lands as are embraced in the act making the railroad grant, approved

[115] Homestead Company case, p. 380: Williams--Baker case, pp. 242-4.

May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th of August, 1846;" and further directed that, "after carefully satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of the Raccoon Fork as were certified under the supposed grant of August 8th, 1846, and which the State of Iowa had sold to *bona fide* purchasers prior to 2d of March, 1861, will be also certified to the State of Iowa."

Now, in regard to this latter part of Secretary Smith's ruling, it is proper here to invite attention to the fact that the sales thus alluded to by him and referred to in the Joint Resolution of 2d of March, 1861, as made by the State of Iowa to certain purchasers under the transcripts certified under said erroneous construction of the act of 8th of August, 1846, for land above the Raccoon Fork, are reported as embracing all the lands thus "improperly" certified for the Des Moines improvement above the said Raccoon Fork.

In this connection it will be observed that, in the act of 12th July, 1862, (Statutes, page 543,) extending the Des Moines improvement to the northern boundary of Iowa and providing for indemnity to that improvement interest, where the land had been sold by the United States, there is an exception made as to those released to the vendees of Iowa by said joint resolution, coupled with an express stipulation to this effect, "that if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant," (by act of 12th July, 1862,) "the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to, and be held as a trust fund for the benefit of the person or persons, respectively, whose titles shall have failed as aforesaid."

Now, in submitting these railroad lists for your consideration, in view of the application for your approval thereof, the question arises whether, under said ruling of your predecessors, these lists shall be approved to the State of Iowa as railroad lands, without reference to said sales, for which the said act of 12th of July, 1862, provides an indemnity fund where they prove invalid, or shall terms of saving and exception, in respect to said sales, be inserted in said transcripts.

Should it be determined by you that such terms are not required, in view of the indemnity stipulation above mentioned, the lists, as they now stand, are before you for approval; but, if otherwise, it is respectfully suggested that you direct the insertion of such terms, before approval, as the nature of the case, in your judgment, may require.

3d. There is another important matter to be considered in the premises, and that is the force and effect of the said act of 12th of July, 1862, in so far as the legal requirements is concerned commanding the Department to grant indemnity to that improvement for lands sold or disposed of by the United States prior to the passage of said act, the Iowa sales excepted. The mode of dealing with this matter is presented in the report from this office, dated October 27, 1862, as approved by Secretary Smith, November 3, 1862; and the principles laid down in that report and ruling will

consequently, govern this office in the adjustment of the extension interest by said act of 12th of July, 1862, unless otherwise directed by you.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

HON. J. P. USHER,
Secretary of the Interior.

To which the assistant Secretary replied as follows:

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

SIR: Your report of the 23d February last in regard to the proper measures for carrying into effect the act of Congress approved July 12th, 1862, by which the grant for the improvement of the Des Moines River was extended, has been carefully considered in connection with your report of the 27th October last upon the same subject.

The Secretary instructs me to state that, after mature deliberation and examination of the additional exhibits filed since your report was received, he concurs in the views you have expressed. He has accordingly approved the lists of lands enuring to the State of Iowa under the act of Congress of 15th May, 1856, which accompanied your report, and the same are now returned to your office, that the same usual transcripts may be furnished to the governor.

The argument of Mr. Mason, and the communication of Mr. Steiger, and its enclosures, which have been received here whilst the matter has been pending, are also herewith transmitted.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO, *Assistant Secretary.*

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

Thereupon certificates were issued, approved April 7th, 1863, conveying to the State of Iowa, under the act of May 15th, 1856, all of the lands which had been certified to the State as a part of the grant of 1846, and which were within the fifteen mile limits of each of the railroads. The following table, put in evidence by the appellees, shows the several certificates made to the State conveying lands under the grant of 1856. The appellees trace their titles to the land in controversy through the certificates made on and after the 7th of April, 1863.

Statement of lands approved to the State of Iowa for Railroads under act approved 15th of May, 1856.

	Land district.	Limit.	Dates of approv'l	No. of acres.
Dubuque and Pacific (now Stoux City) Railroad.	Dubuque	6	Dec. 27, 1858	2,361.08
	do	15	do	5,901.49
	Fort Dodge	6	do	103,341.61
	do.	15	do	210,722.48
	Sioux City	6	do	344,225.20
	do.	15	do	480,929.21
	Fort Dodge	6	April 7, 1863	50,473.32
	do.	15	do	21,061.91
	Sioux City	6	do	1,382.42
	Fort Dodge	6	Dec. 13, 1864	159.60
				1,226,558.32
Deduct corrections				394.83
Leaves corrected am't				1,226,163.49
Iowa Central Air-Line (now Cedar Rapids and Missouri River) Railroad.	Dubuque	6	Dec. 27, 1858	1,809.74
	do	15	do	3,998.57
	F't Des Moines	6	Oct. 24, 1859	12,824.01
	do	15	do	22,887.74
	Fort Dodge	6	Dec. 27, 1858	576.00
	do	15	do	59,072.60
	Sioux City	6	do	132,911.18
	do	15	do	137,641.84
Iowa Central Air-Line (now Cedar Rapids and Missouri River) Railroad.	Council Bluffs	6	do	100,588.07
	do	15	do	193,377.59
	F't Des Moines	6	April 7, 1863	46,838.73
	do	15	do	49,387.16
	Fort Dodge	15	do	13,479.96
Total				775,444.19
Mississippi and Missouri Railroad	F't Des Moines	6	March 26, 1859	17,627.16
	do	15	do	17,162.39
	Council Bluffs	6	Dec. 27, 1858	141,265.07
	do	15	do	211,366.08
	Chariton	15	do	80.00
	F't Des Moines	6	March 21, 1862	11,194.59
	do	15	do	20,906.17
	Council Bluffs	6	do	8,708.49
	do	15	do	17,778.92
	F't Des Moines	6	April 7, 1863	12,071.78
	do	15	do	23,613.71
Total				481,774.36
Burlington and Missouri River Railroad	F't Des Moines	6	Aug. 22, 1859	18,480.62
	do	15	do	25,055.18
	Council Bluffs	6	March 23, 1859	71,675.40
	do	15	do	115,622.04
	do	6	March 21, 1862	21,740.01
	do	15	do	28,034.11
	F't Des Moines	15	Feb'y 18, 1863	160.00
	Council Bluffs	6	April 7, 1863	1,578.47
	do	15	do	4,860.51
Total				287,206.34

None of the lands which had been approved to the State of Iowa under act of 8th of August, 1846, for the improvement of

the Des Moines River, were embraced in any of the lists approved under the act of 15th of May, 1856, until April 7th, 1863; but some of the lands approved under the railroad grant at that date, had been previously approved to the State of Iowa, under said act of 8th of August, 1846, including the lands in question in this suit.[116]

All the lands in the odd-numbered sections in townships 89 and 90 of ranges 28 and 29, lying west of the Des Moines River, except the N. E. $\frac{1}{4}$ of section 23, and N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of section 29, township 89, range 29, and the N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of section 5, township 90, range 29, were certified to the State of Iowa under the act of Congress, approved May 15, 1856, to aid in the construction of a railroad "from the city of Dubuque to a point on the Missouri River at or near Sioux City with a branch from the mouth of the Tete des Morts to the nearest point on said road," and have not been certified to the State of Iowa under any other grant.

The survey of these lands was not completed when the last certificate under the act of August 8th, 1856, was made. They were certified under the act of May 15th, 1856, in April 1863. They were in the last certificates made. If the company was entitled to them they should have been certified upon the completion of the first and second twenty miles of the railroad in 1858.[117]

The following stipulation in the Homestead Company case record presents these facts clearly:[118]

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[116] Wolcott case reprinted in Homestead Company case p. 404, and Williams-Baker case, p. 120–12.

[117] Homestead Company case, (Brown's dep.) p. 223, (Booth's dep.) p. 237.

[118] Homestead Company case, pp. 205–7, 481; (Brown's dep.) 213.

To prevent unnecessary incumbrance of the record, in this cause, it is stipulated that the evidence in the court below established the following facts:

1. That, on the 27th day of December, 1858, there was certified to the State Iowa, under the act of May 15th, 1856, to aid in the construction of the Dubuque and Pacific Railroad, lands as follows:	2,361.08	acres.	
	5,901.49	"	
	103,341.61	"	
	210,722.48	"	
	344,225.20	"	
	480,929.21	"	
			1,147,280.87
2. That, on the 7th of April, 1863, there was certified to the State for the same purpose, additional lands, as follows:	56,473.32	"	
	21,061.91	"	
	1,382.42	"	
			78,917.25
3. And on the 13th of December, 1864,			159.60
			1,224,358.12

4. That the lands certified on the 27th day of December, 1858, embraced none of the lands in dispute in this controversy, and no lands lying in odd-numbered sections within five miles of the Des Moines River.

5. That the lists made on the 7th of April 1863, and the 13th of December, 1864, embrace all of the lands in dispute, except indemnity lands, and all were on odd-numbered sections within five miles of the Des Moines River.

6. That all of the lands certified in 1863 and 1864, except those lying on the west side of the Des Moines River, in townships 89 and 90, ranges 28 and 29, had been certified to the State of Iowa prior to the 15th day of May, 1856, as a part of the grant made by the act of August 8th, 1846; that the manner and dates of said certifications appear by the official letters and orders set out in the evidence offered by the parties.

7. That all of the lands in controversy which were certified to the State as a part of the grant made by the act of 1846, were so certified prior to the year 1854; that the lands embraced in townships eighty-nine (89) and ninety (90) ranges twenty eight (28) and twenty-nine, (29,) west of the Des Moines River, were not surveyed until 1854, and were never embraced in any list certified to the State under the act of August 8th, 1846; that no list under said act was certified to the State after said lands were surveyed; that in 1863 and 1864, said lands were certified under the act of May 15th, 1856, and that they have never been otherwise certified.

8. That the lands certified as above recited, in 1858, to aid in the construction of said railroad, embraced all of the lands lying between the Mississippi and Missouri River, and claimed by said railroad company to be within the limits of its grant, saving and excepting those certified to the State in 1863 and 1864.

The following statement from the record shows the extent of the interferences between the certificates made in April,

1863, under the act of May 15th, 1856, and those made in and prior to 1853 under the act of August 8th, 1846.[119]

Total amount of the certified railroad lists			233,453.00
Dubuque and Sioux City railroad:			
Fort Dodge district—			
Six-mile limits	56,473.32		
Fifteen-mile limits	31,537.34		
		88,010.66	
Iowa Central Air-line Railroad:			
Fort Des Moines district—			
Six-mile limits	46,898.73		
Fifteen-mile limits	49,387.16		
Fort Dodge district—			
Fifteen-mile limits	13,470.96		
		109,756.85	
Mississippi and Missouri Railroad:			
Fort Des Moines district—			
Six-mile limits	12,071.78		
Fifteen-mile limits	23,613.71		
		35,685.49	
Total interference			233,453.00

On the 25th of April, 1863, the Commissioner of the General Land Office issued a special certificate, under the act of July 12th, 1862, authorizing the State to select from the public lands, three hundred thousand acres, as indemnity for the land within the grant sold or otherwise disposed of before the passage of the act, the amount to be reduced or increased according to the result of a final adjustment.[120]

In the months of July and August in the same year nearly 300,000 acres were selected by the agent of the State under this certificate.[121]

On the 19th of December, 1863, the agent of the State of Iowa addressed the following letter to the Commissioner of the General Land Office:[122]

[119] Homestead Company case, p. 137, 123-134:
Riley-Welles case, p. 103.
[120] Homestead Company case, pp. 138:
Williams-Baker case, p. 71.
[121] Homestead Company case p. 139.
[122] Homestead Company case, p. 140:
Riley-Welles case, p. 106.
Williams-Baker case, p. 71.

WASHINGTON, *Dec. 19th, 1863.*

Hon. J. M. EDMUNDS,

Commissioner of General Land Office.

SIR: On behalf of the State of Iowa we hereby request that a complete adjustment of the grant of July 12th, 1862, in extension of the grant of August 8th, 1846, giving lands for the improvement of the Des Moines River, be made at your earliest convenience. and that a certificate be made for the remainder of the lands to be selected as indemnity lands under said grant.

We understand that among the "clear lands" which have been set apart to the State under the said grant of 1862 are some twelve thousand acres which had been selected by the State as school lands under the law of 1841 as amended by a subsequent act of Congress. This land had been selected as school lands, as aforesaid, after the passage of the Des Moines River grant of August 8th, 1846. And as that grant was for several years supposed to extend to the source of the river, the State authorities were notified that they could select other lands in their stead.

This, however, was not done so far as we have been able to ascertain; and when the decision of the Supreme Court of April, 1860, limited the Des Moines River grant of 1846 to the Raccoon Fork the selection of the twelve thousand acres became good and valid.

We therefore request that the said amount of lands be awarded to the State, and that indemnity lands to the same amount be granted us in their stead. We also understand that some eleven or twelve thousand acres of land lying more than five miles from the Des Moines River proper, and which had been improperly certified to the State as part of the lands embraced in the Des Moines River grant of 1846 aforesaid, and were therefore included in the relinquishment made to the State Iowa by the joint resolution of March 2, 1861, had been or are proposed to be deducted from the grant made by the act of July 12th, 1862, aforesaid.

Against this we respectfully protest, and ask from you a re-examination of the matter, and a direction to the proper officer that said deduction be not made, but that the whole amount of lands granted to the State of Iowa by virtue of the said act of July 12, 1862, be set apart to the State accordingly.

In order that the adjustment of the grant may be made final and complete, we hereby relinquish on the part of the State all claim to any lands embraced among the odd-numbered sections along the Des Moines River and within five miles thereof, which now appear to be claimed by pre-emptors, or which, for any other reason, are not included in the lists of "clear lands" set apart to the State under said grant of July 12, 1862.

We also request to be informed whether there is anything to prevent us from selecting the even-numbered sections of land along the Des Moines River, as part of the indemnity lands to which we are entitled under the grant of July 12th, 1862.

Your certificate, previously given, authorizes us to select any lands now subject to sale at $1 25 per acre. These even-numbered sections are of this class, and we hope to be permitted to select a portion of these lands accordingly.

Very respectfully, your obedient servant

D. W. KILBOURNE.

On the 21st of January, 1864, the Governor of Iowa, certified that the selections thus made were binding upon the State and requested that the Commissioner of the General Land Office would "certify the title to the State accordingly."[123]

On the 2nd of June, 1864, the Congress of the United States, by an act amending the act of May 15th, 1856, granted to the Cedar Rapids and Missouri River Railroad Company the right to modify and change the location of the uncompleted portion of its line and to connect its line with the line of the Mississippi and Missouri Railroad Company, and declared that it should be "entitled for such modified line to the same lands and to the same amount of land per mile, and for such connecting branch, the same amount of land per mile, as originally granted to aid in the construction of the main line"—said lands to be "certified and conveyed to said company from time to time as the work progresses on the main line, out of any public lands now belonging to the United States, not sold, reserved, or otherwise disposed of, or to which a pre-emption right, or right of homestead entry has not attached, or on which a *bona fide* settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within fifteen miles of the original main line, an amount of land equal to that originally authorized, be granted to aid in the construction of the said road by the act to which this is an amendment."[124]

On the 22nd of February, 1864, the Cedar Rapids and Missouri River Railroad Company executed a deed conveying to the State all of its right, title, claim and interest in and to all of the lands which had been certified to the State as a part of the grant of August 8th, 1846, and which had by the State been conveyed to private persons. The deed recites that the State of Iowa "does now claim the lands hereinafter described

[123] Homestead Company case, p. 139: Riley-Welles case, p. 105.

[124] Williams-Baker case, p. 27.

as a part of the lands granted to the State" by the act of August 8th, 1846.[125]

March 28th, 1864, the General Assembly of the State of Iowa passed an "act supplementary to chapter ninety-nine of the laws of the seventh General Assembly, approved March 22nd, 1858, and relatiag to the Des Moines River Land Grant, and for the payment of certain audited claims and releasing to the United States certain occupied lands included in said grant." This act modified and changed the conditions upon which the lands were granted to said company by the original act to which it was supplementary, and also imposed new terms and conditions.[126]

On the first of November, 1864, CALVIN BURR brought his action in the Circuit Court of the United States for the Southern District of New York, against the Des Moines Navigation and Railroad Company for breach of warranty set out in deeds executed by the company conveying to him lands which were situated above the Raccoon Fork, and certified to the State of Iowa and by the State conveyed to the defendant as a part of the grant of August 8th, 1846. Defenses: 1st, That the defendant conveyed to the plaintiff a fee simple title. 2nd, That since the conveyance and before the commencement of the action the defendant acquired an estate in fee in the lands conveyed, which by the common law of the State of Iowa and by the statutes of said State, forthwith enured to and vested in said plaintiff as the grantees of the defendant.[127]

The cause was tried at the November term, 1864, of the Circuit Court of the United States for tne Southern District of New York. The foot-notes to the several pages of this statement indicate the evidence which was submitted to the jury.

[125] Williams-Baker case, pp. 315, 321.
[126] Homestead Company case, p. 373.
[127] Burr case, reprinted in the Homestead Company case pp. 417-18, and in Williams--Baker case p. 135-6.

At the conclusion of the evidence, SHIPMAN, J., charged the jury as follows :[128]

GENTLEMEN OF THE JURY: You will see that the conclusions to which I have come upon the questions raised by the evidence in this case dispose of all except one, and that relative to the damages only, which I will submit to you. I therefore charge you—

1. That no title to the lands in question passed to the Territory of Iowa, by virtue of the act of Congress approved August 8th, 1846, these lands lying above the Raccoon Fork of the Des Moines River. This point has been already settled by the Supreme Court of the United State in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, 23 of How. Rep., 66.

2. That none of the acts of the executive officers of the United States which have been proved, nor all of them taken together, had any effect to extend the operation of the act of August 8th, 1846, over these lands, nor in any manner to confer a title to them, either at law, or, strictly speaking, in equity, upon the Territory or State of Iowa, or upon these defendants. This result follows from the decision of the Supreme Court already cited.

3. That these acts of the executive officers of the United States, proved and relied on in this case, did not reserve to the United States these lands for the purpose of aiding in any other objects of internal improvements, or for any other purpose whatsoever, and therefore they are not drawn within the proviso of the act of May 15th, 1856. These official acts were not prompted or guided by any such intentions. Those of them which proceeded upon the idea that these lands were embraced in the grant of August 8th, 1846, were mere errors arising out of a misconstruction of the terms of that grant. They were, no doubt, made in good faith, and for the purpose of formally fixing and defining rights supposed to have been already granted by Congress. But as these acts, according to the case, 23d of How., 66, exceeded the grant made by Congress, they were void. These acts were intended as acts of transfer, and not acts of reservation. To now attribute to them the effect of having reserved these lands to the United States, that is, set them apart for the use of the Government itself, would be reserving the natural consequences originally intended to flow from them. Such a construction of these acts, I think, would be arbitrary, and neither warranted by any circumstances presented by the evidence, or by the settled rules of law. All these acts, therefore, left the lands in question in the same status in which they had always remained. That status was unchanged, not only in fact, but in contemplation of law. The lands were neither sold, granted, nor reserved to the United State for any purpose, but remained in the great body of the public domain, subject to the control of Congress and to the operation of the laws in force regulating the disposition of the public lands,

4. If these views are correct, then the lands in question were embraced in the body of the act of May 15th, 1856, and the title passed by that grant to the State of

[128] Burr case, reprinted in the Homestead Company case, p. 435, and in the Wiliams--Baker case, p. 166.

Iowa in trust. The State took the lands in trust, and by an express provision of the act they were to "be applied to no other purpose whatsoever" than that of aiding in the construction of certain railroads therein named. It is unnecessary to say that the defendant's enterprise is not one of those named in the act as those to which the application of the lands granted is expressly restricted. Whether or not a title in *presenti* passed to the State on the passage of this act I do not deem it necessary now to determine; but I think it is quite certain that that act placed these lands in such a position that they were not reached by the resolutions of Congress of March 2, 1861, and July 12, 1862, upon which the defendants rely. To conclude otherwise would be to hold that these joint resolutions repeal *pro tanto*, without any express provisions—by implication merely—the public act of May 15th, 1856. A construction by which the repeal of a statute by implication is sought to be established is never favored, especially where private rights are concerned.

5. These views being legal conclusions drawn from facts conceded in the case, or established by uncontradicted evidence, cover the whole controversy, except the question of damages. It is my duty, therefore, to direct you to find a verdict for the plaintiff, and assess the damages which he has proved he has suffered from the failure of his title to these lands. The rule by which you will be guided will be the amount of the consideration paid, with interest from the day of payment to the present time, at the rate of six per cent. per annum.

The defendant's counsel excepted to that part of the charge concerning the effect of the act of August 8th, 1846, contained in the second proposition or section of said charge; and also excepted to that part of the charge contained in the third proposition or section thereof; and also excepted to that part of the charge contained in the fourth proposition or section thereof; and also to that part of the charge contained in the fifth proposition or section thereof.

The court thereupon charged and instructed the jury to find a verdict for the plaintiff; to which charge and instructions the defendant's counsel excepted.

The jury found a verdict in favor of the plaintiff, and assessed his damages at $24,254,90, and a judgment was rendered accordingly.

The cause was brought to this court by writ of error sued out by the defendant the De Moine Navigation and Railroad

Company, and the record was filed on the 10th of December, 1864.[129]

On the 28th of February, 1865, the Secretary of the Interior addressed the following letter to the Commissioner of the General land Office :[130]

DEPARTMENT OF THE INTERIOR.

Washington, D. C, Feb. 28th, 1865.

SIR : The authorized agents of the State of Iowa have taken exceptions to certain items charged by you to the State in setting apart the indemnity to be selected pursuant to the act of Congress, approved July 12, 1862, (Stat. vol. 12, p. 543,) for aid in improving the navigation of the Des Moines River.

From your report of the 14th of March last it appears that the entire quantity of lands inuring to the State, as determined under the opinion of my immediate predecessor, dated November 3, 1862, is 558,001.16 acres. You have decided that against said amount the State is chargeable—

	Acres.
1st. With lands found in place as heretofore listed	224,961,17
2d. With lands confirmed to the State by joint resolution of March 2, 1861, though not within five miles of the river	11,661.80
3d. With an excess of land that has been listed to the State of Iowa under the grant by an act of September 4th, 1841	19,308.17
4th. With the amount of a special certificate issued	300,000.00
Total acres	555,931.04

Leaving a balance due of 2,070.12 acres.

The agents of the State, having taken an appeal from your action, claim that there is improperly included in the 1st item 12,813.51 acres of land that has heretofore been certified to the State under the grant of 500,000 acres by the act of Congress, approved Sept. 4, 1841, and that the second and third items, as above, have been erroneously charged, and should not enter into the account.

They also claim that you erred in refusing to sanction the selection of even-numbered sections along the Des Moines River, which are alternate to the odd-numbered sections granted.

Having examined the subject, I am of the opinion that the 12,813.51 acres should not be charged in this account. These lands were approved to the State on the 17th February, 1851, under the grant of 500,000 acres by the act of Sept. 4, 1841 ; and it is to be inferred from other facts stated that they have been sold by the State during the time intervening since the approval. They lie above the Raccoon Fork of the Des Moines River, and hence were not a part of the original grant by the act of Aug.

[129] Homestead Company case, p. 438 : Williams-Baker case p. 360.

[130] Homestead Company case, pp. 135-7: Riley--Welles case, p. 101.

8th, 1846; nor did the confirmatory act of 1861 create a title superior to that which was confirmed and recognized by this Department on the 17th of February, 1851.

Indemnity for the tracts set apart for railroads within the five-miles limits of the Des Moines River grant has been allowed by the decisions of the Department, dated November 3, 1862, and April 7th, 1863, and I am of the opinion that these 12,813.51 acres stand in the same category as the railroad tracts, and that indemnity for them should likewise be allowed.

In regard to the item of 11,661.80, I am of the opinion that it is a proper charge against the State in this account, although the lands do not lie within five miles of the Des Moines River, as now determined and delineated by geographers and the public surveys.

These lands, lying adjacent to the stream now known as the East Fork of the Des Moines River, but then known as the Des Moines River itself, were included in approved lists prepared under the act of Congress of August 8, 1846, and have been regarded as confirmed to the State by the joint resolution of March 2, 1861.

Though the words of that resolution and of the law of 1862 admit of a strong argument in favor of the claim that these lands are granted to the State as well as those which can be brought within the description given in the last-mentioned law it is the opinion of this Department that, under the act of 1862, they are to be charged to the State in adjusting the quantity of indemnity. They have been obtained for the object of the grants; and though entertaining some doubt upon the subject, I deem it to be the safer conclusion that it was not the intention of Congress that the quantity of the grant and selections should exceed the aggregate quantity of the odd-numbered sections lying within five miles of the Des Moines River, from its mouth to the northern boundary of the State of Iowa.

The proposal to offset a part of the lands inuring to Iowa, under the Des Moines grant against a quantity she had received in excess of the grant of 500,000 acres by act of September 4, 1841, will be sanctioned if it can be done with the assent and under the proper authority of the State; and Messers. Kilbourne and Mason, in behalf of this State, now, by letters of 17th of February, undertake to complete an arrangement for settlement.

The excess selections under the act of 1841, as you report, amount to 35,473.54 acres.

Measures have, heretofore, been proposed by the State for reducing this excess, but they have not been carried into effect.

According to the principles above stated, the State has received on account of the grant of 1862 for the improvement of the Des Moines River:

1st. Lands in place	212,147.66
2d. On the east fork of river, and under joint resolution of 1861	11,661.80
3d. Special certificate issued	300,000.00
Making a total of	523,809.46

Leaving a balance of land due of 34,191.70 acres.

This balance is nearly equal to the excess certified under the act of 1841, and I am

assured that an effort will now be made, on the part of the gentlemen representing the State, for the satisfactory adjustment of this balance.

No further selections will therefore be allowed for the present.

I do not think, however, that this Department has power, under any of the acts of Congress upon the subject, to enforce against the wishes of the State, an arbitrary offset of the excess of the 500,000-acre grant against this balance due for the Des Moines Improvement.

I approve your refusal to sanction the selection of the even-numbered sections within the limits of the grant as indemnity.

Should such selections be allowed, the alternation of the granted and reserved sections would be destroyed.

This alternation is expressly established by the acts of Congress making the grants, and for maintaining the same, many good reasons might be assigned.

The papers in the case are now herewith returned.

I am, sir, very respectfully, your obedient servant,

(Signed) J. P. USHER, *Secretary*.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

The case of *Wolcott* v. *The De Moine Navigation and Railroad Company* was commenced in the Circuit Court of the United States for the Southern District of New York at the April Term, 1865. The issues joined were substantially the same in *Burr*, v. *The Same Defendant* mentioned above.[131]

The cause came on for hearing on the 27th day of the following October, Mr. Justice NELSON of this court presiding. The foot-notes in this statement indicate what facts were proved by the evidence. The court charged the jury as follows: [132]

The court charged the jury that the evidence was all clear, and there was no dispute about the facts. The records of the land department of the State of Iowa, and of the respective corporations all agreed. The case therefore presented a question of law only.

The court further charged that, although the defendants may not have had a good title to the land in question at the time they executed their deed to the plaintifl, yet they held at that time a deed of the land from the State of Iowa in fee-simple, and the subsequent resolutions of 1861, and act of Congress of 1862, vested a good title in the State, which immediately enured to the defendants, and through them to the plaintiff, so that the plaintiff took a good title to the land.

[131] Wolcott case, reprinted in the Homestead Company case pp. 383-5, and in the Williams-Baker case, pp. 80-2.

[132] Wolcott case reprinted in the Homestead Company case, p. 412, and in the Williams--Baker case, pp. 130-131.

The court further charged that, by the order of the Commissioner of the General Land Office, made June 1, 1849, and the several proceedings thereupon had, appearing in evidence, the lands in question were reserved by competent authority within the meaning of the act of Congress of May 15th, 1856, and such reservation continued in force until at and after the passage of that act, and the lands in question therefore came within the exception of that act, and were not affected by anything therein contained and thus the title remained in the United States until the passage by Congress of the resolution of 1861, and the act of 1862. To this portion of the charge the plaintifl's counsel excepted.

The court thereupon directed the jury to find for the defendants. To which direction the plaintiff's counsel excepted.

The jury thereupon found a verdict for the defendants, and judgment accordingly.

The cause was brought to this court by writ of error sued out by the plaintiff, and the record was received on the 27th day of November, 1865. On the 21st of December in the same year a stipulation to submit and briefs for the plaintiff in error and the defendant in error filed. On the 6th of January, 1866, the cause was submitted under the 20th Rule. On the 8th of February, Mr. ALLISON appeared in both this and the Burr case, and filed a motion on behalf of the Dubuque and Sioux City Railroad Company for leave to intervene and to file a printed argument. In support of this application he filed the affidavit of JAMES M. MCKINLAY, Esq., showing that he was an attorney for said Company; that the question involved in the cause "is one on which depends the title which the Dubuqpe and Sioux City Railroad Company acquired about seventy thousand acres of land, to aid in the construction of said road; that a final decision ot the above named case against the plaintiff in error would tend to greatly prejudice the said Dubuque and Sioux City Railroad Company, although they are not a party to said cause." On the 13th, leave was granted to file an argument by the 1st of March. On the 21st, PLATT SMITH, Esq., filed an argument on behalf of said railroad Company, discussing the construction of the acts of August 8th, 1846, and of May 15th, 1856. On the 26th of February, B. C. COOK, Esqr., took leave to file an argument by the 1st of March. On the 12th of March, it was ordered that the cause "be continued to the next term, with leave to any of

the parties to file additional arguments." On the 23rd, Mr. COOK filed his brief, discussing the same questions.[133]

March 30th, 1866, the General Assembly of the State of Iowa, passed an act, the preamble and first and second sections of which are as follows :[134]

WHEREAS the excess of land certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4, 1841, known as the 500,000-acre grant, has not been reconveyed nor satisfaction therefor rendered to the General Government ; and

WHEREAS the lands falling to the State, under the Joint Resolutions of Congress of March 3d, 1861, entitled "Joint Resolution to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land claim in the State of Iowa and for other purposes," approved July 12th, 1862, have not yet been certified or approved to the State ; and

WHEREAS the claims of the State against the United States, arising under the swamp land grant, remain to a very great extent in an unsettled and unsatisfactory condition ; and

WHEREAS the interests of the State and her grantees demand a speedy settlement of all said matters ; therefore

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That Josiah A. Harvey, Register of the State Land Office, be, and is hereby, appointed a commissioner on behalf of the State of Iowa, to adjust with the General Government all the matters and claims aforesaid.

SEC. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interest of the State, and he is hereby authorized to adjust the said excess of the 500,000-acre grant, by permitting the United States to retain out of the indemnity land falling to the State under said act of Congress of July 12th, 1862, an amount equivalent to such excess: *Provided*, That nothing herein contained shall be construed to be a relinquishment of the claim of the State under the said 500,000-acre grant to the 12,813 51-100 acres selected as part of such grant, and subsequently rejected from a supposed conflict with the act of Congress approved August, 1846, known as the Des Moines River grant, and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000-acre grant, and a confirmation of the title of the State thereto, as a part of such grant.

May 23rd, 1866, JOSIAH A. HARVEY, Commissioner of the

[133] Copies of the docket entries, minute book and of the arguments of Mr. Smith and Messrs Trumbull and Cook, are set out in the record in the Homestead Company case, pp. 437 to 455 ; also in the Williams-Baker case, pp. 364-68.

[134] Homestead Company case, p. 113 : Riley-Welles case, p. 95.

State of Iowa, submitted to the Census Board of said State the following report: [135]

WASHINGTON CITY, *May 23d, 1866.*

To the Honorable Census Board of the State of Iowa, Des Moines.

Pursuant to the requirements of chapter 79 of the acts of the eleventh general assembly, I have the honor to report that I have consummated an adjustment with the United States of the excess of lands received by the State under the grant of Sept. 4, 1841; also, the lands confirmed to the State by joint resolution of March 2, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862; and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with the whole amount of land in odd sections lying within five miles of the Des Moines River, from the Raccoon Fork to the northern boundary of the State, determined (by the Department) to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to-wit:

		Acres.
1st.	Indemnity lands selected under special certificate dated April 28, 1863	297,603.75
2d.	Remaining lands in place yet to be certified	167,109.02
3d.	Lands in place confirmed by joint resolution of March 2d, 1861	44,838.64
4th.	Lands selected and heretofore certified on the east fork of the Des Moines River, and more than five miles from the western or main branch	11,661.80
5th.	The excess selected and approved to the State as a part of the 500,000 acre grant under act of Sept. 4th, 1841	35,475.54
	Making in all	556,686.74
	And leaving due the State to balance the whole amount of the grant	1,317.32

For which a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the Department, under the decision of the Attorney General, to be a proper and legitimate offset to so much of this grant. Hence they are charged to the State in this settlement.

The 35,475.54 acres charged as excess under the 500,000 acre grant (act of 1841) include the 22,660.03 acres over and above the 500,000 acres which is embraced in the book of diagrams approved and certified to the State on the 12th of September, 1841 and which has hitherto been considered the "excess," and also the 12,813.51 acres which were once approved as a part of the 500,000 acre grant, and afterward rejected

[135] Homestead Company case pp. 34, 14, 197, 219: Williams-Baker case, p. 73: Riley-Welles case p. 96.

and approved and certified as a part of the Des Moines River grant. These lands have been known as the "River school lands."

Notwithstanding that they have been disposed of by the State as a part of the Des Moines River lands, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841. Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the Department has determined.

The proper and necessary lists according to the terms of this adjustment, will be made and approved by the Secretary, and delivered to me or sent to the State.

In the preparation of these lists, all the lands which appear at the General Land Office as having been selected as swamp under act of Sept. 28th, 1850, and all tracts to which pre-emption rights had attached prior to July 12th, 1862, will be excluded. If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of Sept. 28th, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the Government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which I think is fair and just and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States, of all claims under the Des Moines River grant, as well as the act of 1841; except so far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant (35,473.54 acres) thus deducted, is by an agreement between the State and The Des Moines Valley Railroad Company, (the beneficiary of the grant,) to be credited to said company at the rate of one-dollar and twenty-five cents per acre, in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should, therefore, be credited on the claims they were under obligations to satisfy, with the sum of $44,341.67.

My authority extends only to the settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, for me to say, that this settlement has been made with the United States, with the full understanding that this arrangement shall be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior (a copy of which, accompanying Mr. Kilbourne's report made last winter, is herewith transmitted for your examination in connection with this adjustment) is the result of their efforts.

The labors of their agents, Messrs. Kilbourne and Mason, heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early, It is due to the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet your approbation; and that you will, as I think you have the right and may safely do, fully consummate and

carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted,

J. A. HARVEY, *Commissioner.*

Adjustment of the Des Moines grant under the act of July 12, 1862, and Joint Resolution of March 2d 1861.

Debit.	Acres.	Credit.	Acres.
The State of Iowa with the quantity of indemnity lands selected under the special certificate dated April 25, 1863.	297,603.74	The State of Iowa with the whole of the area of the grant above the Raccoon Fork	558,004.06
The lands in place to be certified	167,109.02		
The lands in place confirmed by joint resolution of March 2d, 1861	44,838.64		
The quantity selected on the east fork of the Des Moines River, and certified to the State under the original law of August 8th, 1846	11,661.80		
The excess selected and approved to the State under the 500,000 grant of 1841.	35,473.54		
	556,686.74		
Remaining indemnity due to the State	1,317.32		
	558,004.06		558,04.06

J. M. EDMUNDS,
Com. Gen. Land Office

Endorsement.

WASHINGTON CITY, *May 21st. 1866.*

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30th, 1866, "for the adjustment of certain land claims with the General Government," I. Josiah A. Harvey, register of the State Land Office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State, as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and Commissioner on behalf of the State of Iowa.

DEPARTMENT OF INTERIOR, *May 22d, 1866.*

The adjustment as herein stated is hereby approved.

JAMES HARLAN, *Secretary.*

There was certified to the State of Iowa an excess of 35,000 acres of land under the grant of September 4th, 1841, generally known as the "500,000 acre grant." In the foregoing adjustment the General Government retained, as indemnity for this excess, 35,000 acres which were embraced in the grant of July 12th, 1862. The Des Moines Valley Railroad Compa-

ny was entitled to these lands under the legislation of the State. The Company was indebted to the State on account of debts paid by it which were a charge upon the grant. In consideration of the relase by the company of its claim upon said 35,000 acres of land, the State gave a credit to it on said indebtedness for the value thereof at the rate of one dollar and twenty-five cents per acre.[136]

In reference to the settlement, Mr. HARVEY as a witness, testified:[137]

In view of the law as understood to be settled in the case of the "Dubuque and Pacific Railroad Company vs. Litchfield," (23 How., 66,) the lands in odd sections within five miles of the Des Moines River, above the point referred to, and which were within the limits of the grant for railroad purposes of 15th May, 1856, were considered as enuring under said grant to the railroad companies, and were therefore excluded from this settlement, as land otherwise appropriated by the government, notwithstanding they had been previously certified to the State under act of 1846, and disposed of by the State. The 44,838.64 acres which in said settlement were considered as confirmed to the State by said resolution of March 2, 1861, (the numbers of which will be found, I think, on pages 30 and 31 of biennial report of my successor of Nov. 12, 1867,) I understand to be those tracts of the Des Moines River lands to which the railroad companies made no claim under their said grant; such only were included in the settlement.

Int. 4. In the settlement made by you, under said resolution and act, if said odd sections within the railway grant of 1856, within five miles of the Des Moines River, in townships 86, 87, 88, 89, and 90, and ranges 27, 28, 29, and 30, were not conceded to belong to the extension of the grant of the Des Moines River improvement, under act of 1846, under either the resolution of March 2, 1861, act of July 12, 1862, what was done with them?

Ans. 4. They were as above stated considered as disposed of by the Government, by the act of May, 1856, and to have passed to the State for railroad purposes.

Int. 5. If said odd sections in said townships were not treated as part of the lands included under said resolution and act, under what act of Congress, and to what grant were they conceded to belong?

Ans. 5. They were conceded to belong to the railroad grant of act of Congress, of 15th May, 1856, as above stated.

Int. 6. If they were conceded to belong to the Dubuque & Pacific (now Dubuque

[136] Homestead Company case, p. 218, (Brown dep.) p. 223:
Williams-Baker case, p. 77:
Riley-Welles case, p. 99.

[137] Homestead Company case, pp. 246-8:
Riley-Welles case, p. 71.

& Sioux City) grant, under the act of 1856, what was conceded to and obtained by the State in lieu thereof, and indemnity therefor?

Ans. 6. I have not here the means of acertaining the limits of the grant as fixed by and applied to the respective roads, and cannot from memory state whether the townships referred to, fall within the limits of the road referred to or not, but say, that these lands (within five miles of the river and above the fork) and in odd sections, and within the limits of either of the railroads) were in said settlement considered railroad land, under act of 1856. * * * * * * * * * * * * * * * * * * Under the law as then understood to be settled the right of said company to said lands within its limits was in said settlement conceded—or, to be more accurate, the title was conceded to be in the State for the use of the said company. This special certificate of April 25, 1863, was issued before I was appointed commissioner, and I understand, from the connection I have had with the matter as Register of the State Land Office, and Commissioner of the State, as well as from D. W. Kilbourne and Commissioner of the General Land Office, that it was issued in pursuance to the act of July 12th, 1862; that the Department first ascertained the amount of land the State was entitled to under that grant, extending it to the northern boundary of the State, then deducting the lands coming within the grant which were liable to be, but had not been certified, and also deducting the amount confirmed by resolution of 1861, and that previously selected and certified on the east fork of the Des Moines River, and the excess of the 500,000 acre grant, or, in other words, retaining enough to make good these several amounts, (which were all charged to the State,) issued said certificate approximating towards, but not intended to cover quite all the State was entitled to, and the settlement was consummated on the basis insisted on by the Government (admitting these charges, and allowing their deductions;) so that while I cannot state positively that the State received other lands by virtue of said certificate in lieu of the particular tracts referred to in the last question, I do say that in said settlement the State has received indemnity for said lands, either in said certificate, or in that certified on the East Fork, or in the excess of the 500,000 acre grant, or in the 1,317.32 acres, which balances the account and closes the grant under and according to said settlement.

I think said Kilbourne was President of said Company (the Des Moines Valley Railroad Company) and also appointed by the Governor as agent of the State on account of his connection with and interest in the company, (it being considered beneficiary of the grant,) to look after the matters. He, with Judge Mason's assistance, procured the issuing of said certificate, (such is recollection,) and Mr. Kilbourne located said certificate, (but all these facts will appear, I think, more satisfactorily from the records of the State Land Office.) I am satisfied Mr. Kilbourne knew the terms of the settlement before and after it was completed, and that the right under the act of 1856 was conceded to the railroad companies to lands on the Des Moines River in odd sections within their respective limits, and that the State was to receive other lands in lieu thereof, although he was not present when it was made.

This settlement was made on the 28th day of May, 1866.

Neither the De Moine Navigation and Railroad Company nor any of its grantees were present at such adjustment; they were not consulted in regard to it and never assented to it. JOHN BROWNE, the agent and a member of the company, on several occasions objected to it.

The Des Moines Valley Railroad Company was not present but Mr. HARVEY understood that its agents desired the adjustment on the terms on which it was made.[138]

On the 14th of June, 1866, the Secretary of the Interior approved to the State of Iowa a list embracing ninety-six thousand eight hundred and ninety-nine 46-100 (96,899,46) acres of "lands selected as indemnity, under the act of July 12th, 1862, entitled 'an act confirming a land grant to the State of Iowa, and for other purposes,' as per special certificate No. 1, by D. W. KILBOURNE, agent of the State of Iowa;" and on the same day similar lists were approved to the State, embracing two hundred thousand seven hundred and four and 28-100 (200,704,28) acres.[139]

The following is an extract from the report of the Commissioner of the General Land Office, of the 2nd of October, 1866:[140]

"By the act of August 8th, 1846, a grant was made of certain lands to the territory of Iowa, to aid in the improvement of the Navigation of the Des Moines River in said territory.

Under that law and pursuant to former departmental decisions, there were certified 593,964.42 acres, of which 271,572.24 acres are situated above the mouth of the Raccoon Fork.

The validity of selections north of that stream was subsequently drawn in review by the Supreme Court of the United States, at the December term, 1859; (23 Howard, in the case of the Dubuque and Pacific Railroad Company vs. Litchfield,) when it was ruled in effect, that the State of Iowa, under the grant of 1846, had no valid title north of the Fork in question.

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[138] Deposition of J. A. Harvey, 6th and 7th int. and ans. Homestead case record, pp. 482-3: See also his deposition in the Williams-Baker case, p. 308: See Riley-Welles case, p. 100.

[139] Homestead Company case, pp. 226-234: Riley-Welles case, pp. 108-9, 121-2.

[140] Riley-Welles case, p. 123:

In view of this judicial determination, the department under the railroad grant made to Iowa, by act of May 15th, 1856, certified to that state, for the benefit of certain railroads, 233,453 acres falling within the limits which had been claimed for the improvement. Subsequently, Congress, by Joint Resolution approved March 2, 1861, relinquished to the State all the title which the United States then retained in the premises when the lands were held by *bona fide* purchasers from the State. Under that resolution the Department has certified to Iowa 44,838.64 acres.

By the act of Congress approved July 12th, 1862, "confirming a land claim in the State of Iowa, and for other purposes" Stat. Vol. 12, page 543, the original grant of 1846 was extended so as to embrace the odd numbered sections within five miles of the Des Moines, from the aforesaid Fork to the northern boundary of the State. In adjusting the grant under said act the department has certified lands in place equal to 167,109.02 acres; indemnity lands 297,603.74 acres; leaving a residuum of 1,317.32 acres for which a special certificate has been issued, authorizing additional selections to that extent, thus fully satisfying the claim under the several legislative acts, and making the aggregate granted to the State, under the act of 8th August, 1846, Joint Resolution of 2nd March, 1861, and the law of 12th July, 1862, of 833,079.90 acres, on account of the Des Moines Improvement."

On the 1st of December, 1866, Mr. STEIGER called the attention of the Commissioner of the General Land Office to this adjustment (with HARVEY,) and asked to be informed "whether or not the lists of lands certified to the State in pursuance of said adjustment, include the lands to be held in trust for lands previously taken by the railroad grants of 1856, or otherwise disposed of within the limits of the old river lists, improperly approved under the act of 8th August, 1846, as provided by the act of 12th July, 1862." On the 4th of the same month the Commissioner answered that the lists did "include therein the lands to be held in trust as provided by said act."[141]

On the 14th of December, 1866, JOHN F. DUNCOMBE, Esq., moved the court for leave to the plaintiff in this case, the Homestead Company, to intervene in the Burr case, for the purpose of argument, assigning as a reason—

1. That said company and their grantees are directly interested in the decision of this cause in this, to-wit: Said company and their grantees claim to be owners in

[141] Williams-Baker case, pp. 78-9.

fee simple of the lands named in the pleadings, and over 50,000 acres of other lands, the title to which is involved in the decision of the legal questions involved in this suit.

On this application leave was granted on the 17th of December, when it was further ordered that the two cases should be argued together. On the 8th of February, 1867, the cases were submitted together.[142]

On the 13th of May, 1867, the judgment of the court below in the Burr case was reversed and that in the Walcott case was affirmed.

The plaintiffs below and appellees here, introduced in evidence the depositions of BURR and WOLCOTT. The depositions are in the records. Their substance may be stated as follows:—

CALVIN BURR testified: That he was frequently in LITCHFIELDS' office and had been for ten years; had business transactions with him, but could recollect none in which they were jointly interested; sold him Iowa lands and stocks; the lands were some he had taken from the De Moine Navigation and Railroad Company; that LITCHFIELD gave him a guaranty against loss upon these lands, and their relations as to that contract were not terminated; that LITCHFIELD was to pay back to him $3,000 which he advanced to the company and guaranty him against loss on account of being a stockholder and director of it in consideration of the conveyance; that he brought a suit against the company for a breach of warranty in the conveyance of some lands; that he had held stock and bonds of the company, but could not tell how many; that he paid money for them; that he received no salary as an officer of the company; that he paid for the lands which were the foundation of the suit in the stock and bonds of the company, but could not state the amount; that he had a general knowl-

[142] Homestead Company case, pp. 438, Williams Baker case, pp. 360 3-442 inc.

edge of the financial condition of the company at the time he commenced the suit, and knew that the lands it had received from the State were its only assets; that he knew of no other assets out of which a judgment could have been satisfied; that EDWIN C. LITCHFIELD requested him to commence the suit and said that the defendant would pay the costs; that he did not know whether the documentary proof which he used on the trial was arranged by LITCHFIELD or the lawyers; that he don't know whether LITCHFIELD prepared the argument in the Supreme Court of the United States, as he took but little interest in it; that a bill of costs was sent to him but he did not pay it. He then corrected his evidence by saying that the conversation with LITCHFIELD was prior to the commencement of another suit than this one; that the understanding as to this suit was with the company, and that at the time LITCHFIELD was in Europe.[142]

SAMUEL G. WOLCOTT testified: I am the Samuel G. Wolcott named as plaintiff in the case of *Wolcott* v. *The De Moine Navigation and Railroad Company*, tried in October, 1865. The De Moine Navigation and Railroad Company conveyed to me about twenty-five hundred acres of land. I never disposed of any of the land conveyed to me. The price I paid for the lands varied from three dollars to ten dollars per acre, and the consideration has been for most part cash; have exchanged bonds for land, but paid cash for bonds.

The suit was brought upon consultation with other members of the family interested with me in these lands belonging to said company. I mean relations of my wife's family. I had conversations with EDWIN C. LITCHFIELD, president of the company, about the commencement of the suit. I have no recollection of anything being said about payment of the costs of the suit, either by him or the Des Moines Company. I had no conversation with any other officer of the company except

[142] Williams--Baker case, pp. 447, 453.

JOHN STRYKER who was one of the members of the family referred to. I had written correspondence with EDWIN C. LITCHFIELD prior to the commencement of said suit relating thereto. I have paid the costs of suit but have no vouchers for the same. Paid, I suppose, all the costs, cannot state the amount. I paid with my own means, no other person furnished means for that purpose.

I had no particular acquaintance with the financial condition of the company but supposed it good and solvent. I had no knowledge of its assets and had none at the time.[144]

June 29th, 1867, Commissioner WILSON communicated to E. C. LITCHFIELD his views as to the extent of the decision of this court in the Wolcott case, as follows:[145]

> It is true the court expressed the opinion that, under the first named or river grant of 1846, the odd numbered sections within said limits above the forks were reserved, and that therefore title could not pass under the second or railroad grant of 1856. However this may be, it is held by this office that, after the rejection by the Supreme Court in 1859 of the Des Moines grant as to lands above the Raccoon Fork, and before the confirmation of said lands in favor of *bona fide* purchasers from the State, such reservation did not operate as a bar to the privileged class of persons known to our system as actual settlers under the pre-emption laws; and it is not understood upon what ground a claim under the Des Moines grant can now be set up to the tracts covered by actual settlement of pre-emption, when in the final adjustment of that grant, allowance for the benefit of said improvement claim has been fully given in other lands by way of indemnity, and accepted by the State accordingly.
>
> Your request, therefore, that all pre-emption claims to lands within the limits indicated be rejected unless they had their inception prior to the original grant of 8th of August, 1846, is hereby declined.

On the 31st of March, 1868, the General Assembly of the State of Iowa, passed "an act prescribing the terms and conditions on which the State will relinquish and convey to the Des Moines Valley Railroad Company certain rights and privileges in respect to the resumption of lands heretofore granted to said company." After naming the terms and conditions, it provided that upon receiving satisfactory evidence of a com-

[144] Williams--Baker case, p. 455.

[145] Homestead Company case, p. 32; Riley--Welles case, p. 124.

pliance with the same, the governor "should execute and deliver to the Des Moines Valley Railroad Company, or to their assigns, a deed or deeds, in the name of the State of Iowa, without warranty, for all the lands embraced in said act of Congress, approved July 12th, 1862," saving and excepting certain reservations theretofore made.[146]

On the 6th of May, 1868, Secretary BROWNING addressed an official letter to the Commissioner of the General Land Office holding, as to a parcel of land certified to the State under the acts of August 8th, 1846, and May 15th, 1856, claimed by an "actual settler:"

1. That the land was not properly certified under the act of 1846, as construed by the Supreme Court of the United States, in the case of *The Dubuque and Pacific Railroad Company* v. *Litchfield*; that it was not withdrawn or reserved by the order of Commissioner Young of June 1st, 1849, because it was then beyond the limits of completed surveys; that it did not pass to the De Moine Navigation and Railroad Company by the Joint Resolution of March 2nd, 1861, because it did not appear in the list of lands sold by the State; and that it did not pass to the State by the act of Jnly 12th, 1862, because the State relinquished all claim to it by the Harvey adjustment.

2. That the certification to the State for railroad purposes, under the act of May 14th, 1856, was void because it was so held in the Wolcott case (5 Wall. 81).

3. That the effect of the decisions of the Supreme Court and the Harvey adjustment was to restore the lands to the public domain, at least so far as to subject them to the operation of the pre-emption and homestead laws.

4. That under the act of June 2nd. 1864, (13 Stat. at Large,

[146] Homestead Company case, pp. 458, 156.

98,) the rights of bona fide inhabitants are protected, though they are not pre-emptors.

5. That the claimants having settled upon the lands in good faith in 1857, and having purchased the improvements of a prior settler in good faith, and having complied with the requirements of the pre-emption laws, he was entitled to a patent.[147]

On the 30th day of September, 1868, WILLIAM B. WELLES brought his action against HANNAH RILEY, in the District Court of Webster County, Iowa, claiming title and the possession of certain lands. His claim of title was substantially the same as the plaintiff's in *Wolcott* v. *The De Moine Navigation and Railroad Company*. Defense—"that prior to 1861, said land was public land, the property of the United States and subject to settlement under the pre-emption laws of the United States; that she entered upon said lands under said laws in the year 1854, and that she in all respects complied with said laws and duly obtained from the government of the United States a patent for said land; and that she now holds and for more than ten years prior to the commencement of this action had held and had possession of said lands by virtue of her rights as a pre-emptor and purchaser thereof."[148]

On or about the 16th day of October, 1868, the Des Moines Valley Railroad Company executed a mortgage to N. A. COWDREY and W. S. GILMAN, trustees, conveying its railroad and all the lands granted to it by the State of Iowa, to secure the payment of a series of bonds amounting in the aggregate to four millions nine hundred thousand dollars.[149]

The question of the effect of the Joint Resolution of March 2nd, 1861, was brought before Secretary Browning, on the application of one Spicklemier to pre-empt, as public lands, a

[147] Riley-Welles case, pp. 126-31.
[148] Riley-Welles case, p. 10.
[149] Homestead Company case, p. 143.

tract situated above the Raccoon Fork, which had been certified to the State as a part of the grant of 1846, and by the State conveyed to third parties. In disposing of the case, in a letter to the Commissioner of the General Land Office, bearing date December 31st, 1868, he said:

> This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the Joint Resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress, approved August 8, 1843, and was then held by *bona fide* purchasers under the State of Iowa," and the title of the United States, was by said resolution, relinquished to said State.
>
> Your decision in favor of Spicklemier is therefore reversed.

Similar rulings were made in similar cases arising upon the application of Martz, Bennett and Hull to pre-empt lands—the cases of Bennett and Hull were decided in 1866.[130]

On the 3rd day of November, 1869, the case of *Welles* v. *Riley* came on for hearing in the Circuit Court of the United States for the District of Iowa. A decree was entered in accordance with the prayer of plaintiff's bill, and the defendant appealed to this court.

The evidence submitted is shown by the foot notes in this statement. The record of the case is not in this case, but is in this court, and references are made to it as supporting our proposition that the decision of this court is a precedent as to one of the questions of law presented in these cases.[131]

The cause was heard at the December Term, 1866, of this court and the decree below affirmed.

The opinion of the court is not reported, and we therefore copy it entire:

> Mr. Justice NELSON delivered the opinion of the Court.
>
> This is an appeal from the Circuit Court of the United States for the District of Iowa.

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[130] Homestead Company case, pp. 457, 478-9; Williams-Baker case, p. 245-6; Riley-Welles case, pp. 93-4.

[131] Riley-Welles case p. 181.

This case is not distinguishable from that of *Wolcott* vs. *The Des Moines Company*, (5 Wall., 681.) Welles, the plaintiff below, derives his title by deed from this company, the same as Wolcott in the former case. The suit in that case was brought to recover back the consideration money from the Des Moines Company, the grantors, on the ground of failure of title. The court held that Wolcott received a good title to the lot in question under his deed.

In that case it was insisted that the title was not in the Des Moines Company, but in the Dubuque and Pacific Railroad Company.

In the present case the defendant claims title under, and in pursuance of, the pre-emption act of September 4, 1841.

Her husband took possession of the lot in 1855, and she was permitted by the register to prove up her possession and occupation May, 1862. The patent was issued October 15, 1863.

It will appear from the case of *Wolcott* vs. *The Des Moines Company* that the tract of land, of which the lot in question was a part, had been withdrawn from sale and entry on account of a difference of opinion among the officers of the land department as to the extent of the original grant by Congress of lands in aid of the improvement of the Des Moines River, from the year 1846 down to the resolution of Congress of March 2, 1861, and the act of July 12, 1862, which acts we held confirmed the title in the Des Moines Company. As the husband of the plaintiff entered upon the lot in 1855 without right, and the possession was continued without right, the permission of the register to prove up the possession and improvements, and to make the entry under the pre-emption laws, were acts in violation of law, and void, as was also the issuing of the patent.

The reason for this withdrawal of the lands from public sale or private entry are stated at large in the opinion in the case of *Wolcott* vs. *The Des Moines Company*, and need not be repeated. The point of reservation was very material in that case, and we have seen nothing in the present one, either in the facts or in the argument, to distinguish it.

The decree below affirmed.

Nearly all of the lands certified to the State of Iowa under the act of July 12th, 1862, in place and indemnity were, on the 23d day of February, 1869, conveyed by patents to the Des Moines Valley Railroad Company. The deeds recite a compliance by said company with the terms and condition of the grant by the State. They reserve some parcels, the title to which is contested and all of the lands which had been conveyed by the State as a part of the grant of 1846, prior to the passage of the Joint Resolution of March 2nd, 1861, including

those conveyed to the De Moine Navigation and Railroad Company.[152]

August 25th, 1870, the Secretary of the Interior addressed the following letter to the Commissioner of the General Land Office:[153]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 25, 1870.

SIR: On the 27th day of February, 1869, my predecessor, in returning to your office the papers in the case of Levi Hall, involving the right to the southeast of the northeast quarter, and lot No. 1, section 17, township eighty-three, range 26, in the Des Moines land district, Iowa, remarked that said tract was situated above the mouth of the Raccoon Fork in that State, and formed a part of the lands, which, prior to the passage of the joint resolution of March 2, 1861, had been certified to said State improperly by this Department, as a part of the grant by act of Congress, approved August 8th, 1846, and was then held by a bona-fide purchaser under the State of Iowa. He therefore held that Hull, whose settlement was subsequent to the withdrawal of the land, was not entitled to pre-empt it.

I have considered that decision, in connection with the papers submitted with your letter of the 17th of September last, relating to the claim of the Des Moines Navigation and Railway Company to certain land in that State, lying within five miles of the Des Moines River, above the Raccoon Fork, which, it is alleged, was improperly certified to the State in the years 1851, 1852, 1853, for the improvement of that river under said act, and was sold by the State to bona-fide purchasers, the company being one of them, as, in that event, their title was, in the view of my predecessor, confined to them. They ask that it be respected by the Department, and that no pre-emption, homestead, or other entry be allowed to any such lands.

I did not reply to your letter at an earlier date, inasmuch as instructions had already been given to the local officers not to permit such entries; and as the questions passed upon by my predecessor were involved in the case of Hannah Riley vs. Wm B. Welles, then pending before the Supreme Court of the United States.

Welles derived the title by a deed from the Des Moines Company. Riley took possession of the tract in 1855, and claimed it under the pre-emption act of Sept. 4th, 1841, upon proving settlement and cultivation. She was permitted to make entry at the local office, and a patent for the tract was issued to her in 1863. It was part of the lands falling within the category of those mentioned in the letter of my predecessor as having been improperly certified to the State.

The Supreme Court, at the last term, held that the joint resolution and the act of July 12th, 1862, confirmed the title in the company, and that Riley's entry and the patent issued to her, were in violation of law and void.

[152] Homestead Company case, pp. 462, 47–8.

[153] Homestead Company case, p. 480; Williams–Baker case, p. 305.

The judgment of the court below awarding the tract to Welles, was affirmed.

As the decision of my predecessor has thus been sanctioned by the Supreme Court, it is the duty of the Department and of your office to execute it in all cases where it is applicable.

The papers are returned.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

To Hon. Jos. S. WILSON,
Commissioner of the General Land Office.

The title to the lands certified to the State under the act of July 12th, 1862, and the adjustment known as the Harvey Settlement, was ratified and confirmed to the State and its grantees by an act of Congress approved March 3rd, 1871[154]

The following is the text of the act:

An act confirming titles to certain lands.

Be it enacted by the Senate and House of Representatives of the Udited States of America in Congress assembled, That the title to the land certified to the Stste of Iowa by the Commissioner of the General Land Office of the United States, under an act of Congress entitled "An act confirming a land claim in the State of Iowa, and for other purposes," approved July 12th, 1862, in accordance with the adjustment made by the authorized agent of the State of Iowa and the Commissioner of the General Land Office, on the twenty-first day of May, anno Domini eighteen hundred and sixty-six, and approved by the Secretary of the Interior on the twenty-second day of May, anno Domini eighteen hundred and sixty-six, and which adjustment was ratified and confirmed by act of the General Assembly of the State of Iowa, approved March thirty-one, eighteen hundred and sixty-eight, be, and the same is hereby ratified and confirmed to the State of Iowa and its grantees, in accordance with said adjustment and said act of the General Assembly of the State of Iowa: *Provided*, That nothing in this act shall be so construed as to effect adversely any existing legal right or the rights of any party claiming title or the right to acquire title to any part of said lands under the provisions of the so-called homestead or pre-emption laws of the United States, or claiming any part thereof as swamp lands.

Approved March 3, 1871.

The record in the Iowa Homestead Company case contains stipulations signed by the parties showing:

1. That the defendants who claim as grantees of the De

[154] Homestead Company case, pp. 277, 484.

Moine Navigation and Railroad Company have good and sufficient conveyance to themselves severally, of all the title which the said company ever had to the lands claimed by them.[155]

2. That the Dubuque and Sioux City Railroad Company has whatever title the Dubuque and Pacific Railroad Company had in the lands in controversy.[155]

3. That the defendant, the Des Moines Valley Railroad Company, complied with the terms of the several acts of the legislature of Iowa granting to it the lands in controversy and claimed by it; that it completed its road to Fort Dodge before January 1st, 1861, and paid to the State of Iowa one hundred and sixty thousand ($100,000) dollars in cash as required by the act of 1868.[155]

4. That the D. W. Kilbourne was a director in the Des Moines Valley Railroad Company from the 1862 to 1867.[155]

5. That the Dubuque and Sioux City Railroad was completed to Sioux City, July 4th, 1870.[155]

6. That the Iowa Homestead Company has all the title to the property in dispute which lawfully belonged to the Dubuque and Pacific Raidroad Company and the Dubuque and Sioux City Railroad Company.[156]

The following appear in the Williams–Baker case:

1. That on the 14th day of June, 1866, there was certified and approved to the State of Iowa, under the Joint Resolution of March 2nd, 1861, 44,838.64 acres of land lying outside of the limits of the railroad grants, which were all the lands cerfied under said resolution.[157]

2. That the indemnity lands certified to the State of Iowa, under the act of Congress of July 12th, 1862, have been set apart for or conveyed to the Des Moines Valley Railroad Com-

[155] Homestead Company case, p. 298.
[156] Homestead Company case, p. 489.
[157] Williams–Baker case, p. 312.

pany, and that the De Moine Navigation and Railroad Company has received no part thereof.[157]

3. That the Des Moines Valley Railroad Company has constructed its road and is now operating the same from Keokuk up the Valley of the Des Moines River to Fort Dodge in Iowa, a distance of two hundred and fifty miles, crossing the Cedar Rapids and Missouri River Railroad nearly at a right angle: and that it has succeeded to all the rights, property and privilieges of the Keokuk, Fort Des Moines and Minnesota Railroad Company.[157]

4. That both the De Moine Navigation and Railroad Company and the Cedar Rapids and Missouri River Railroad Comare duly incorporated; that the former was organized on the 6th day of May, 1854, and the latter in 1858 or 1859.[157]

5. That on or before the 9th day of June, 1854, there was certified to the State of Iowa, as passing to it under the grant of the 8th of August, 1846, lying *below* the Raccoon Fork the quantity or amount of three hundred and twenty-two thousand three hundred and ninety-three and 18-100 (332,393.18) acres, but of the amount only fifty-three thousand five hundred and fifty-three and 17-100 (53,553.17) acres were conveyed to the De Moine Navigation and Railroad Company, the balance having been sold or conveyed by the Board of Public Works of the State of Iowa to purchasers from the State.[158]

We submit the foregoing as a statement of all the material facts disclosed by *any* of the records in the five cases mentioned. Elsewhere we shall argue that all of the facts, material to this controversy are disclosed in *all and each* of said records, and that the decisions of this court in the first of these cases are precedents to be observed and followed in the determination of the last two.

THOMAS F. WITHROW,
of counsel for the appellees.

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[157] Williams-Baker case, p. 312.

[158] Williams-Baker case, p. 313.

Mthrow p 3

9. Stat at Lage, p 82

10 " " " p 26.27

10 " " " p 714

Curtis

11. St page 9

15. Peley, U.S. v Dixon. p 165

p. 59. record 370 - [illegible]

284

102 - Mthrow's Brief

p 205 - Homestead

7.4

In Supreme Court of the United States,

December Term, 1872.

JESSE C. WILLIAMS,
Appellant,

vs.

WILLIAM BAKER,
Appellee.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY AND OTHERS,
Appellants,

vs.

JOHN H. MARTINDALE AND OTHERS,
Appellees.

Argument by Edwin C. Litchfield,

Permitted by the Court to intervene.

Dec. 2, 1872

NEW YORK:
EVENING POST STEAM PRESSES, 41 NASSAU STREET, COR. LIBERTY

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THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY, and others,
Appellants,

vs.

JOHN H. MARTINDALE, and others,
Appellees.

Argument in behalf of the Iowa Land and Loan Company, filed by permission of the Court.

The question involved in these cases is as to the title to certain lands in Iowa.

By Act of Congress of 8 August, 1846, a grant was made to that State, to aid in the improvement of the Des Moines river; and this is commonly known as the Des Moines River Grant. Under this act the Secretary of the Treasury, then having the supervision of the Land Department, decided, in 1849, that the

grant made by the act extended along both sides of the Des Moines River from its mouth to its source, and that it did not terminate at the Raccoon Fork of the river; and in compliance with that decision the officers of the Department approved and certified to the State, in and prior to 1853, sundry tracts of land as passing by that grant; a portion of the lands so certified being situated above the mouth of the Raccoon Fork of the Des Moines river; and the State sold them and applied the proceeds in improving the river, as provided in the Act of Congress. The Commissioner of the Land Office, in his annual report, 14th Jan., 1850, estimated the quantity of land which was included in said grant and "situated between the Raccoon Fork and the source of the river" at 900,000 acres.

Of the lands *above* the Raccoon fork, the State made 697 conveyances to individuals, and the residue it sold and conveyed to the Des Moines Navigation and R. R. Company, by contracts made in 1854, and by patents dated in 1858.

The appellees in these cases claim title from the State under the aforesaid river grant, as confirmed by the Joint Resolution of Congress of 2d March, 1861, and by Act of Congress, of July 12th, 1862.

By another Act of Congress, of May 15, 1856, a grant of lands was made to the State of Iowa, for the purpose of aiding in the construction of railroads. This grant was donated by the State to sundry railroad companies, by acts of the General Assembly, set forth in the records; and the appellants claim that the two grants to the State were in conflict, and that they hold the paramount title to the lands in question, under the railroad grant.

In 1860 this court decided in Litchfield *vs.* Dubuque Company—23 Howard, 66—that the grant made by the Act of 8th Aug., 1846, did not extend above the mouth of the Raccoon Fork of the Des Moines river. This decision affected the title to about 271,572 acres of land, which had up to that time been certified by the executive officers at Washington, as having passed to the State under the river grant, and which had been accordingly sold and conveyed by the State. These lands had all been withheld from sale by the Land Department from 1849, and reserved, for the purpose of applying them in satis-

faction of the grant supposed to have been made by the Act of 8th Aug., 1846; and this reservation had been directed and continued from time to time by succeeding heads of the Department; and after the decision, in 23 Howard, 66, the Commissioner of the General Land office, on the 18th May, 1860, issued a notice *continuing the reservation* of said lands, "in order to afford time for Congress" to consider the matter. This continuance of the reservation was approved by the Secretary of the Interior, and the matter was brought to the attention of Congress. On 2d March, 1861, Congress passed the Joint Resolution of that date, relinquishing to the State all the title which the United States still retained in the lands above the Raccoon Fork of the Des Moines river, which had been improperly certified as part of the grant made by Act of 8th Aug., 1846; and on 12th July, 1862, Congress passed an Act extending the grant made by the act of 8th Aug., 1846, to the northern boundary of the State.

The appellees claim that by these confirmatory acts the title of the State and of its grantees was made good as to all the lands which had been certified under the Act of 8th Aug., 1846, and such was the decision of this court in the case of *Wolcott* vs. *Des Moines Company*, 5 *Wallace*, 681 and in the subsequent case of *Welles* vs. *Riley*, not reported, but which is printed at page 99 of the statement of facts of the appellee in the first above entitled case.

The Iowa Land and Loan Company is a purchaser of a large quantity of the lands in question, and is, interested in the decisions which may be made in these cases.

The question of title involved was determined by this Court, in the case of Wolcott in 5 Wallace 681, and in the subsequent case of Welles *vs.* Riley, and we therefore, apologize in advance for troubling the Court with further argument: but so long as this question is held as an open question in this Court, and parties are heard to argue against the title which was thus established by its decisions, ordinary prudence requires that those who rely upon that title should say what they can to support it when attacked. We, therefore, by permission of the Court, offer the following:

ARGUMENT:

First Point.—The Acts of Congress of 8th August, 1846, 2d March, 1861, and 12th July, 1862, made *direct grants in fee* to Iowa, which vested a complete title in the State at the moment of their enactment. No action of the Land Department was necessary in order to complete the title, and the land officers had no authority to do anything whatever in relation to the granted lands, except to make the partition which was rendered necessary by the terms of the Act of 1846, which granted a "moiety" of an undivided tract. Under these Acts of Congress the State acquired a title, which was *good*, as against the Government, from 8th August, 1846.

I. When lands are granted or confirmed by a law, in terms of specific description, and by words of present grant, the title is thereby transferred from the grantor and at once vested in the grantee by force of the law itself, without any patent or any other action of the Land Department; and a grant thus made by a law is higher evidence of title than a patent.

As to a Grant Made by a Law.

In 12 *Peters*, 454, *Strother* vs. *Lucas*, this Court said: "That a grant may be made by a law as well as a patent pursuant to law, is undoubted."

In 2 *Howard*, 319, *Grignon's Lessee* vs. *Astor*, this Court said of a grant thus made by a law: "It was a higher evidence of title than a patent, as it was the direct grant of the fee which had been in the United States by the Government itself; whereas the patent was only the act of its ministerial officers."

As to Confirmation by an Act of Legislation.

In 12 *Peters*, 454, *Strother* vs. *Lucas*, the Court said: "A confirmation by law is as fully, to all intents and purposes, a grant, as if it contained in terms a grant *de novo*."

In 2 *Howard*, 316–317, *Stoddard* vs. *Chambers*, it was said: "A confirmation by Act of Congress vests in the confirmee the right of the United States, and a patent, if issued, could only be evidence of this." Such a title, it was said, "has the highest sanction of the Government—an act of legislation."

AS TO THE TIME WHEN CONFIRMATION WILL TAKE EFFECT.

"When a party acting for himself, or by a previously authorized agent has attempted to enter into a contract, but has done so in an informal or invalid manner, he confirms the act and thus renders it valid—*in which case it will take effect as between the parties from its original making.*"

Bouvier's Law Dictionary—Title, "Confirmation."

In 4 *Wallace* 204, *Lanfear* vs. *Hawley*, it was said that an Act of Congress confirming a claim to land, "confirms to the grantee whatever he was entitled to by the original grant, *conceeding that to have been valid.*"

In 6 *Peters*, 691, 713, *United States* vs. *Arrendono* (page 713), this Court said: "When Congress have, by confirming the reports of Commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is *a legislative affirmance of the construction put by these tribunals on the laws* conferring the authority and prescribing the rules by which it should be exercised; or—which is to all intents and purposes of the same effect in law—it is a legislative ratification of an act done without previous authority, and *this subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done.*"

Having thus considered the effect of direct grants, by law, without any patent, and the effect of a subsequent recognition and confirmation by law of acts originally done without legal authority, we proceed to consider the terms and effect of the Acts of Congress, and other legislation, upon which the title of the appellees depends.

II. The Act of Congress of 8th August, 1846.

This Act "granted to the territory of Iowa * * one equal moiety in alternate sections of the public land, * * * in a strip five miles in width on each side of the Des Moines River, to be selected within said territory by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

By Section 4 of the Act it was provided that whenever the Territory should be admitted as a State, the lands so granted "shall be and become the property of said State."

The lands granted were thus perfectly identified, and the act made a direct grant in fee, and the title vested in the Territory the moment the bill became a law. The Territory was admitted into the Union as a State on the 28th December, 1846, and the lands granted then became "the property of the State." The certified lists of the lands were not issued from the Land Office to the State, except as the surveys progressed, and extended from 1851 to 1853; but the *title* to all the lands granted was fully *vested in the grantee* at the moment of the enactment of the law. The United States and Iowa then became tenants in common in the land, "one equal moiety" of which had thus been granted.

The statute pointed out the mode of partition—Iowa was to make its selection of the alternate sections "subject to the approval of the Secretary of the Treasury," Iowa selected the odd sections, and the Secretary approved the selection; and in this way the partition was made.

Before this selection and approval, *the title* of Iowa to the granted lands was as perfect and as completely vested as it was after the selection and approval; but it was a title to an undivided interest which became separate and distinct when the partition was complete.

The certified lists issued from the Land Office under the grant were of no importance, except as a mode of making partition; and, if they had never been issued, the complete title

vested in Iowa by the Act itself would not have been thereby impaired. But the certificates were evidence of the "approval" by the Secretary of the selection made by the State. The partition was thereby made complete, and the power of the Land Office in relation to the matter was thereby exhausted. This was in 1851–1853, and since that time the Land Officers have had no authority to deal with these lands as a part of the public domain.

Such was the construction put upon this Act by this Court in 23 *Howard*, 66, *Litchfield* vs. *Dubuque Co.*: when the Court said that the Act "made a direct grant in fee" which vested the title at once—and that "no authority was conferred upon the Land Officers to do more than to make partition in the manner prescribed in the Act."

In making the partition called for by the Act, the Land Officers issued to Iowa certificates for the alternate sections, as far as the surveys were completed, extending above the Raccoon Fork of the river, their action being based upon the decision made by the Executive officers that the grant extended to the northern boundary of the State. Of the lands so certified to the State, 271,572 acres were situated *above* the Raccoon Fork of the Des Moines River. But in 23 *Howard*, 66, this Court decided that the grant did not extend above the Raccoon Fork. This made necessary a confirmatory Act of Congress, which was:

III. The Joint Resolution of 2d March, 1861.

By this Joint Resolution "*all the title* which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by Act of Congress, approved 8th August, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby relinquished to the State of Iowa."

The lands were here perfectly identified—they had been already listed and certified—and noted upon the records of the general and local land offices, as granted to Iowa under the Act of 8th August, 1846, and official certified lists had been furnished to the State. Upon the passage of this joint resolution those certified lists received the ratification of Congress, and *the title* to the lands therein specified became perfect in the State and its grantees. Nothing which the Land Department or any of its officers might do, or fail to do, could in the slightest degree affect the matter. No power was conferred upon them to do anything about it. The Joint Resolution of 1861, like the Act of 1846, vested the title at once.

The appellant's counsel seem to suppose that it was necessary for the Land Officers to again certify these lands to the State before any title would vest; but the resolution does not require it—for it declares that the title "is *hereby* relinquished to the State." The resolution itself, expressing the will of Congress, and acting upon the specific lands which had already been certified—completed the transfer of title, and vested it in the State.

It is also argued that the Joint Resolution did not operate as a direct grant, which passed the title at once, to *all* the certified lands, because it recited the fact that the lands were held by *bona fide* purchasers under the State; and that therefore, the grant was to be deemed *limited* to lands which were thus held; and that evidence *aliunde* would be required to ascertain what lands were intended.

It is also said that as by the Joint Resolution the United States only relinquished "all the title which it still retained," the necessary implication is that there was title in tracts of land that had been improperly certified which the United States did not retain; and that the lands thus indicated were the lands which had been granted by the Act of May 15, 1856, and that upon these various questions the Secretary of the Interior had power to adjudicate, and that therefore his certificates of April 7, 1863, in which he certified a portion of these lands as passing to Iowa under the Railroad Act of 1856, notwithstanding they had been previously certi-

fied under the river grant, were effectual to vest the title in the State under the Railroad Act.

As to the power of the Secretary of the Interior, and as to the effect of his certificates of April 7, 1863, it seems only necessary to repeat what this Court said in 23 Howard, 66–86, Litchfield *v.* Dubuque Co., and in 2 Wallace, 525, Stone *v.* United States.

In 23 Howard it was said that the "Act of Congress of 8th of August, 1846, was a direct grant to Iowa in fee of an undivided moiety of the whole tract; Congress held the undoubted power to make the grant and vest the fee," and in the same case the court said that "no authority was conferred upon the Land Officers to do more than to make partition in the manner prescribed by law." And again: "On mature consideration, we are of opinion that the title of neither party has been affected by the proceedings in the Land Office, or by the opinions of the officers of the Executive Department, but that the claims of the parties under the two Acts of Congress must be determined by the construction to be given to those Acts." The two Acts of Congress thus referred to were the acts of 8th August, 1846, and of 15th May, 1856. In 2 Wallace, 525, it was said "One officer of the Land Office cannot cancel or annul the act of his predecessor. That is a judicial act, and requires the judgment of a court."

We therefore, consider as of no importance, these certificates of the Secretary made in 1863, certifying the lands to the State under the railroad grant—ten years after the same lands had been certified under the prior grant of August, 8th 1846.

The words "which are now held by *bona fide* purchasers under the State," are not *a limitation* of the grant, but are merely the recital of *a fact* which made it proper for Congress to confirm the title.

This fact had been officially communicated to the President of the United States, by the Governor of Iowa, on 28 April, 1858, when the President was informed that under contracts made by the State with the Des Moines Navigation and Railroad Company, said company had paid $332,634, which had been expended upon the improvement of the river, in pursuance of

the Act of 8 August, 1846, and that in consideration of such expenditures, and in pursuance of said Act of Congress, the State would convey to said company 266,107 acres of the lands belonging to the grant, and which had been certified and approved to the State under that Act.

The Secretary of the Interior furnished the draft of the joint resolution of 2 March, 1861, to the Senate Committee, and recommended the confirmation "of *all* the lands in contest, *which have been sold, granted or conveyed* by the State;" and in the same letter he added, "the understanding of this Department being that the State has *sold* to individuals, and an incorporated company, *all* the lands falling to her under the Des Moines Grant."

The Secretary wrote to the Governor of Iowa, speaking of the proposed joint resolution, as relating to "that portion of the claimed lands which *have been heretofore certified* by my predecessors," and added "*so far as my predecessors have acted* under the grant of August 8, 1846, I am willing to recommend a *confirmation of that action* by Congress."

With this full knowledge that the State had sold to *bona fide* purchasers *all* of the certified lands, and with the distinct recommendation of the Department to confirm the title to *all* the lands thus sold, Congress acted; and the debate in the Senate shows that the Iowa Senators insisted throughout upon confirming the title to *all* the lands which had been certified to and sold by the State, and that they successfully resisted an amendment whereby it was attempted to limit the confirmation to a *part only* of the lands.

With this history of the case before us, it is manifest that any construction of the Joint Resolution, which could *limit* the confirmation of title, to *a part* only of the certified lands, would subvert the actual intention of the law makers.

But the language of the resolution neither requires nor justifies any such limitation.

Congress was dealing with the question of title to a specified class of lands—those which *had been certified* under the Act of 1848, and which were situated *above* the Raccoon Fork.

The record shows that of such lands, the State had prior to May 15, 1856, sold the entire quantity of 271,572 acres; a por-

tion of which had been sold to the Navigation Company, and had also made 697 other sales of such lands to individuals. The patents to the company were dated in May, 1858. It does not appear what was the date of the 697 *sales* to individuals, but of the conveyances by the State to individuals, 199 were of a date prior to 15th May, 1856, and 498 were dated in 1858, 1859 and 1860.

So the matter stood, when the State appealed to Congress to make good the title to *all* these purchasers, upon the ground that they had been misled and induced to purchase defective titles, through the mistakes of the heads of the Land Department, and of the Law Department of the United States, who had decided that the State had a good title to the lands, upon the faith of which decision, and in accordance with it, the United States, and the State, and purchasers under the State, had acted since 1849.

The plainest equity required that the titles of the State should be made good to *all purchasers;* and the State, and the Executive Department and Congress co-operated to attain this result.

With this object, the Joint Resolution of 1861, was framed and adopted by Congress ; its terms show its intent.

"All *the title* which the United States still retains * * * * [*in the tracts* of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, *which have been certified* to said State improperly, by the Department of the Interior, as part of the grant by Act of Congress, approved August 8, 1846 * * * and *which is* now held by *bona fide* purchasers under the State of Iowa] be, and the same is hereby relinquished to the State of Iowa."

The Joint Resolution may be said to consist of two distinct parts—a *recital* setting forth the reasons for legislative action, and the enacting part. The recital in the above copy of the resolution is embraced in brackets, and is in substance like the preamble to a statute, or like the usual "whereas," &c., of a resolution; and the resolution should be interpreted as if it read : "Whereas, certain tracts of land, &c., * * * have been certified improperly * * * as part of the grant by Act of 8 Aug., 1846, which lands so improperly certified are now held by *bona fide* purchasers under the State, &c. : *Therefore,* all the

title which the United States still retains in the lands so certified and sold, be, and the same is hereby relinquished," &c.

But if the resolution were to be understood as limited to *bona fide purchasers* under the State, the record shows that the Navigation Company was a *bona fide* purchaser; that it contracted with the State for the purchase of the lands in 1854; that this contract was adjudged valid and binding upon the State by the Supreme Court of that State in 1857; that all the purchases were made and most of the payments for the same, amounting to $332,634, were made before the passage of the Railroad Act of May 15, 1856; and that in 1858, upon a contract making a final settlement between the State and the Company, and, upon a further consideration, then paid by the company, the State granted and conveyed these lands to the company by a law of the State and by patents, and that the law of the State and the patents issued to the company in pursuance thereof, conveyed these lands to the company in fee-simple, and in terms equivalent to warranty.

The record not only shows that the Navigation Company was a *bona fide* purchaser, but it also shows that the United States government had been informed of that fact, and that Congress legislated with reference to it; and therefore we say, that *this particular conveyance of* $266{,}107\frac{23}{100}$ *acres* for the consideration of $\$332{,}634\frac{4}{100}$ *to a grantee named by the State, and known to Congress*, must be deemed to be absolutely *confirmed* by Congress, by the Joint Resolution, *as much so as if it had been therein specified in terms.*

The guarded language employed—"all the title which the United States still retains"—was required by the facts of the case. From 1849 all the executive departments of the government had acted upon the understanding that the title to the lands in question belonged to the State under the grant by act of 1846, and they had been reserved for the purposes of that grant.

When the railroad grant was made by Act of 15th May, 1856, no one supposed that act would affect the title to lands which had been previously certified under the Act of 1846. Fourteen days after the passage of the act making the railroad

grant, Attorney-General Cushing had given an elaborate opinion to the Interior Department upon this question, in which he held that "*In so far as regards selections already approved*, whether by yourself or Mr. Stuart, *it is clear that the Government cannot undo that.*" The Secretary of the Interior concurred in this opinion; and in November, 1856, when applied to by the Hon. Reverdy Johnson to issue patents to owners of the certified lands, who had purchased from the State, he declined to do so, upon the ground that the certificates issued by himself and his predecessor, to the State of Iowa, "had divested the United States of the title." Such certificates had the force of patents, and could only be set aside by judicial proceedings.

During the five years which had elapsed between the passage of the Railroad Act, in 1856, and the adoption of the Joint Resolution, in 1861, the Interior Department had constantly refused to certify any of those lands under the railroad grant, for the reason that they had already been reserved for and certified under the River Grant. It is true, that in 1860, this Court decided, in the case in 23 How., 66, that the grant by the Act of 1846, did not extend above the Raccoon Fork; still the decision was only in one case, upon an agreed statement of facts, and it did not release, nor purport to release, the lands in question from the *reservation* which had been made of them in 1849, and which had been continued in force by the various officers of the Land Department down to 1861, for the purpose of appropriating them to the river grant; and in November, 1860, seven months after the decision in 23 Howard, 66, the Secretary of the Interior wrote: "The State authorities still assert *the equity* of the title, which has been recognized by my predecessors, though since declared to be invalid by a decision of the Supreme Court of the United States;" and he affirmed the action of the Land Office, *in continuing to reserve* the lands until Congress could act upon the subject; and the reservation was continued accordingly.

With a knowledge of these facts Congress acted, and its evident intention was, by the Joint Resolution of 1861, to put an end to all uncertainties regarding the title to the lands "*which had been certified*" under the Act of 1846; and, in view of these uncertainties, the language of the resolution

was adopted: "All the title which the United States still retains;" but no inference can be drawn from this language, towards sustaining the appellant's claim of title under the Railroad Act of 1856.

We repeat, therefore, that the Joint Resolution of March, 1861, was in and of itself a direct grant, which *ex proprio vigore* transferred to the State of Iowa and its grantees "all the title" which, up to that time, had been retained by the United States to *all* the lands previously certified under the Act of 8th Aug., 1846.

The title of the State of Iowa and its grantees, which was thus confirmed by Congress, was made good not merely from the passage of the Joint Resolution, but by relation back to the certificates, it was made good as against the government and all parties claiming under it by title subsequent, from the date of those certificates, and from the enactment of the law under which they were issued.

6 Peters, 713.
4 Wallace, 204.
Bouvier's Law Dictionary; Title—Confirmation.
Before cited.

Such we understand to be the effect of the joint resolution of 1861. But in addition to this is—

IV. The Act of Congress of July 12, 1862.

We ask the attention of the Court to its precise terms. It is entitled, "An Act *confirming a land claim* in the State of Iowa, and for other purposes," and it enacts that "*the grant of lands* to the then Territory of Iowa," made by the Act of 8th August, 1846, *is hereby extended so as to include the alternate sections designated by odd numbers* lying within five miles of said river, between the Raccoon Forks and the northern boundary of the State." Here again the lands granted are perfectly identified; the Act made a direct grant in fee, and the title vested at once. The State of Iowa had always *claimed* that all

the lands here designated were included in the grant made by the Act of 1846; and by the action of the Land Department they had all been withheld from market since 1849, to satisfy that claim; and Congress, in 1861, had confirmed the titles *to that portion* of the lands above the Raccoon Forks, for which certificates had been issued, and which had been "sold by the State of Iowa," being 271,572 acres. But this Act of 1862 was intended further to "confirm" the "claim" made by the State, and to extend the grant so as to include the alternate odd numbered sections within five miles of the Des Moines river, between the Raccoon Fork, and the Northern boundary of the State. The Act does not purport to make a new grant in addition to the former one, but simply enacts that, '*the grant made by the Act of 8th August*, 1846," * * * is hereby "*extended so as to include*" the lands above mentioned.

The claim of the State was that the lands in question *had been granted* by the Act of 8th August, 1846; and this claim was *confirmed* in its fullest extent in the Act of 1862; and the legal effect of this confirmation was to make the title of the State to all the granted lands, whether above or below the Raccoon Fork, *good from 8th August*, 1846; and such title must be held good *from that date*, as against the government and all parties claiming under it by title subsequent.

V. The decisions of the Courts as to the effect of the Joint Resolution of 1861, and the Act of July 12, 1862, sustain the views above presented.

(1.) *In* 5 *Wallace*, 681, *Wolcott* vs. *Des Moines Company*: Wolcott's deed from the company was dated in 1859; and the company held under a patent from the State, dated in 1858, given in pursuance of previous contracts of sale made by the State to the company; and this Court held that these Acts of Congress, by relation back, made a good title in Wolcott's immediate grantor, and in the State at the dates of their respective conveyances; and that Wolcott took a good title under his deed. In that case it was insisted, in opposition to Wolcott's title, that the land had passed to the State under the railroad

grant made by the Act of 15th May, 1856, and that the title was in the Dubuque and Pacific Railroad Company. But this Court held that the title was in Wolcott.

(2.) In *Welles* vs. *Riley*, subsequently decided in this Court, but not reported. Welles held under title from the Des Moines Company, as Wolcott did. Riley had a patent issued under the pre-emption laws, based upon an entry made in 1855. This Court held that the title was in Welles. The Court referred to the decision in the case of Wolcott, as showing that the lands had been "withdrawn from sale and entry from 1846 down to the resolution of Congress of March, 1861, and the Act of July 12, 1862, *which acts, we held, confirmed the title in the* Des Moines Company."

(3.) The Supreme Court of Iowa held the same doctrine in 22 *Iowa Reports*, 151, *Stryker* vs. *Polk County;* where it was judicially determined that the grantees of the State were *owners of the lands and bound to pay the taxes* on them from the date of the conveyance by the State in 1858.

That Court said: "The plaintiff held a deed from the State —the State claimed under the original grant, the lists being duly certified—he was a *bona fide purchaser*, and the title still retained by the Unites States was relinquished to the State for his use." Again: "The United States had already, in the manner contemplated by the act, parted with its title—the State, upon the faith of the title thus acquired, had sold and conveyed—and the joint resolution of 2d March, 1861, was intended, as a matter of justice and right, to secure and quiet *bona fide* purchasers in their titles." Again: "Our opinion is, that holding the title as he did, the joint resolution of 1861, for the purpose of the present inquiry, *made it as good from the time of the first conveyance by the State*, as it was *after* such Congressional action."

(4.) *Bellows* vs. *Todd* is a recent and unreported case, also decided in the Supreme Court of Iowa; in which it was held that Bellows' title (he holding under the Des Moines Company) was made good by the confimatory resolution of March, 1861,

and Act of Congress of July, 1862, against the title of Todd, who held under a pre-emption and homestead entry commencing in 1860.

The principle upon which these decisions rest we understand to be, that these confirmatory acts relate back to *the inception* of the State's title; and make it good *from that time* as against the government and all parties claiming under it by title subsequent; and the *inception* of the title of the State was the Act of 1846, and the issue of certificates made under it.

(5.) When the government *confirms* a claim to land—whether the confirmation is by patent or by legislative grant, the legal title relates back to, and takes effect from the *inception* of the right of the grantee—so as to cut off all subsequent claimants.

Accordingly, in 6 *Wallace*, 418, *Stark* vs. *Starrs*, this Court said: "When in fact the patent does issue, it relates back to the inception of the right of the patentee, so far as it may be necessary to cut off intervening claimants."

12 *Howard*, 59, *Lessieur et al.* vs. *Price*, was a case of direct grant by Congress—but where the lands granted could only be made certain by the selection by the grantee, and the Court held that the title made by the grant "related to and *took effect from the first act done* by the State towards giving precision to the title," so as to cut off all intervening claimants.

We think that it is established that the State of Iowa acquired a good title to all the lands which were certified to it as a part of the grant made by the act of 8th August, 1846: And that the confirmatory acts of Congress made the title good *from its inception* on the 8th August, 1846, as against the government, and all parties claiming under it by title subsequent.

The appellants claim however that the lands had been previously granted to the State, for railroad purposes, by the act of May 15, 1856, and that, therefore, they were not confirmed to the Des Moines river grant by the Joint Resolution of 2d March, 1861, and by the Act of 12th July, 1862.

The State of Iowa accepted the grant made by the Act of May 15, 1856, and regranted the lands to several railroad com-

panies. The grant for the route through the lands now in question was to the Iowa Central Air Line R. R. Company.

It is claimed by the appellants that that company made a survey and location of its route, and filed a map of it, and staked out its line, and thus located its route through the lands in question, in the month of March, 1857, and that, by means thereof, the title to the odd numbered sections became vested in the State of Iowa, at that date, for the purpose mentioned in the Act of Congress.

On 17 March, 1860, the General Assembly of the State repealed the law making the grant to the Iowa Central Air Line R. R. Company, and absolutely resumed all rights to the lands thus granted; and on the 26th March, 1860, made a grant to the Cedar Rapids & Missouri River Railroad Company inthe special terms which appear in the record.

By this last act the State made a grant of all her "right, title and interest in" the granted lands, "*and nothing more*," with a proviso, that "in no event shall said company have any claim or recourse against the State for any defect in the title or conveyance of said lands"; and, by sec. 3 of the act it was provided that the company should take the grant "with the conditions imposed and incumbrances specified in this act; and in no event shall have any claim or recourse upon the State of Iowa for a misapplication of said grant, incumbrances or conditions in this act specified."

Sec 5 of the act provided that the company should get title to the lands only as follows: "When they shall have completed each section of twenty miles of road aforesaid, they shall be entitled to the amount of land apportioned thereto, *and not before*;" and that they should become entitled to the first apportionment only upon the completion of the first section of 20 miles

They allege that forty miles of the railroad was completed on or before Dec. 1, 1861, and claim that thereby they became entitled to 153,600 acres of land; that there was not so much public land applicable to the grant between the Mississippi River and a point five miles west of the Des Moines River, and, *therefore*, the grant attached to and took the alternate sections on both sides of the Des Moines River, claimed as belonging to

the Des Moines River grant, and that *the title* to said lands became *vested on and before Dec.* 1, 1861.

At that date the nearest part of *the completed* line of railroad was more than eighty miles distant from the lands in the Des Moines River grant.

On the 2d June, 1864, the road had been completed to Nevada, which was about twenty miles distant from the eastern boundary of the river grant.

On said 2d June, 1864, Congress passed an act amending the act of May 15, 1856. By this amendatory act the Cedar Rapids Railroad Company was authorized to "modify and *change the location of the uncompleted portion of its line*," and for its modified line was to have "the same lands and the same amount of lands per mile as originally granted, to aid in the construction of its main line, *subject to the conditions and forfeitures* mentioned in the original grant," with a provision that the Secretary of the Interior should cause to be conveyed to said Company, from time to time, as the work progresses on the main line, "out of *any public lands now belonging* to the United States an amount of land equal to that originally authorized to be granted for the main line."

Upon the foregoing statement of the acts of Congress and of the State of Iowa relating to the railroad grant, we submit the following proposition:

Second Point.—The lands in question did not pass to the State under and by virtue of the railroad grant made by act of 15th May, 1856.

1. Because, prior to that date they had been "otherwise appropriated," and therefore would not pass under the grant, even if not reserved.

The record shows the various proceedings of the Land Office, in withdrawing these lands from sale, and setting them apart from the mass of public lands, and certifying them to the State, as being a part of the grant made by the Act of 8th August, 1846, and we submit that—

Taken together, these acts of the Land Office and of the executive officers of the Government, constituted an "appropriation" of the lands for a specific purpose—that of satisfying a supposed grant by Congress; and being so "appropriated," they did not pass by the Act of 15th May, 1856.

The meaning of the term "appropriated," as applied to lands, has been defined by this Court.

In 13 *Peters*, 498, *Wilcox* vs. *Jackson*, the Court said: "An appropriation" of land, "*is nothing more nor less than setting apart the thing for some particular use.*" In the same case the Court said, "Whenever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and *no subsequent law*, proclamation or sale *would be construed to embrace it or operate upon it, although no reservation was made of it.*"

In 12 *Wheaton*, 586, *Chotard* vs. *Pope*, the Court speak of lands as having been "appropriated" by "*being withdrawn from the mass of* lands offered for sale."

It is thus seen, that "withdrawing lands from sale" is "appropriating" them. Consequently these lands were "appropriated" by the Commissioner's order of 1st June, 1849, withdrawing from sale all the lands then supposed to be granted by the Act of 8th Aug., 1846.

Afterwards the Commissioner of the Land Office, from time to time, made out and certified the usual descriptive lists of said lands, under his official seal, which were approved by the Secretary of the Interior, and delivered to the State. By Act of 3d August, 1854, entitled "An Act to vest in the several States and Territories, the title in fee of the lands which have been or may be certified to them," these lists were to be "regarded as conveying the fee simple of all the lands embraced in such lists," which were of the character intended to be conveyed by the Act of Congress.

These official certified lists were designed to be substitutes for patents; and they are placed upon the footing of patents. They had the force of patents, as to all lands intended to be granted by Congress; and they were for all purposes as effectual and conclusive as patents until *judicially* set aside.

A patent is from its date an "appropriation" of the land it covers—so that it is no longer vacant or subject to location, and this is so, even if the patent has been improperly issued. It has all the effect of a good and valid patent until *judicially* set aside.

7 *Wheaton*, 212, *Hoofnagel* vs. *Anderson*. In this case the Court said: "It is not doubted that a patent appropriates land. Any defects in the preliminary steps which are required by law are cured by the patent. It is a title from its date, and has always been held conclusive against all those whose rights did not commence previous to its emanation." * * * "A patent appropriates the land it covers; and that land, being no longer vacant, is no longer subject to location. If the patent has been issued irregularly, the Government may provide means for repealing it, but no individual has a right to annul it, to consider the land as still vacant, and to appropriate it to himself."

So a "survey," has been held to appropriate the land it covers, without reference to the question whether it was or was not legally made.

In 1 *Peters*, 628, *Jackson* vs. *Clark et al*, a question arose upon the construction of an act of Congress which provided that "No locations shall be made on tracts of land for which patents had previously been issued, or which had previously been surveyed." In that case one party relied upon the fact that his lands had been "surveyed" before the location made by the other party, but the *effect* of the same was attempted to be avoided upon the ground that it was illegal, being based upon warrants which had been previously satisfied. But the Court said:

"A survey made by the proper officer, professing to be made on real warrants, bearing upon its face every mark of regularity and validity, presented a barrier to the approach of the locator which he was not permitted to pass: *which he was not at liberty to examine.*" * * "*The illegality of the survey would not have been examinable by him.*"

In the case at bar, Congress has provided that lands otherwise "appropriated" should not pass by the act of 15th May, 1856. It was the *fact* of appropriation of the lands having been

made—like the *fact* of a survey having been made—which Congress had in view. In neither law did Congress require that it should be *lawfully* made; it was sufficient that it was "made by the proper officer," "professing to be made upon a real grant," and "bearing upon its face every mark of regularity and validity." If an appropriation of the lands had been made *in fact*, and by competent authority, it was all that was required to except the lands from the operation of the act of 15th May, 1856, even if it be admitted that the officers acted upon an erroneous construction of the act of 8th Aug., 1846.

We, therefore, claim that these official certified lists, like patents, "appropriated" the land which they covered; and that the "appropriation" remained in force until such certificates were *judicially* set aside. As they were in full force when the act of 15th May, 1856, was passed, the lands included in them were excepted from the operation of that act.

In Lester's Land Laws, Regulations and Decisions, page 554, is a decision by the Secretary of the Interior, dated 14th January, 1856, in which he states the effect of a certified list of lands approved by the Secretary, as follows:

"The approval of the list directed to be prepared under the act of 1849, exhausts the power of the Secretary of the Interior over the subject matter; and *he can no more of his own motion revoke or cancel any part of an approved list* under that act, *after it has passed from him than a patent for land after its delivery.*"

Such also was the opinion of this Court, in 2 Wallace, 525, where it was said—

"One officer of the Land Office cannot cancel or annul the act of his predecessor. *That is a judicial act, and requires the judgment of a Court.*"

Stone vs. *United States*, 2 *Wallace*, 525–535.

The decision of this Court, in 23 *Howard*, had no effect whatever upon this question of the "appropriation" of the land. It undoubtedly decided that the "appropriation" had been made upon an erroneous construction of the law; but the appropriation itself remained in force; and it could only be removed by an Act of Congress making other disposition of the lands, or by a direct judicial proceeding brought to cancel the

certificates, as would have been required if they had been patents.

We conclude, therefore, that the lands in question having been "appropriated" prior to the passage of the Act of May, 1856, would not have passed under that act, even if they had not been specially reserved from its operation.

II. Because *before the passage of that act* they had been *reserved* by competent authority, and, therefore, were, by the act itself, excepted from its operation.

This Court having adjudged this point in the three cases of Wolcott, Burr and Welles, we do not propose here to reargue it, but refer to

> 5 *Wallace*, 681, *Wolcott* vs. *Des Moines Company*. *Welles* vs. *Riley; not reported, but* printed in *the abstract of facts in these cases furnished* by the *appellees*, *p.* 99.

III. Because the act of 15th May, 1856, reserved to the United States the right to *continue to sell and dispose of* the lands thereby granted, notwithstanding that act, up to the time when the route of the road should be "definitely fixed," by *being actually constructed* to and *completed through* the granted lands in sections of twenty miles each.

The grant is a conditional grant in the nature of *a float*, which did not attach to any particular parcel of the public lands until and as the road was *actually built:* then, for the first time, the particular lands granted became certainly known, and the grant became operative, and the title to the alternate sections then remaining of public lands on each side of *the completed road* became vested in the State *upon the completion* of each section of twenty miles, and not before; and the title did not become perfect to any lands except as and when the road was *actually completed through* them.

Such is the construction put upon this grant by Attorney General Cushing in advising the Interior Department. (*See Vol. VIII, Opinions of Attorney-General, p.* 244, *Iowa Railroad Grants.*) In this case he said: "Upon the most attentive consideration of this act, in all its parts, it has proved impossible for me to entertain a doubt as to its legal effect.

"The act declares 'that there be, and hereby is, granted to the State of Iowa,' for certain purposes, certain portions of the public domain within said State, not yet made positive in location, but capable of being so rendered on the happening of particular future events mentioned.

"But the grant was not merely subject to future events for the determination of the specific sections of land to which it would attach, it was also subject not to vest at all, or to be divested according to future events; for the State of Iowa might not accept, or might fail to execute conditions annexed to the grant; such, for instance as the primary one of entering upon the construction of the contemplated roads.

"If the act stopped here there would be nothing in it to constitute, on the day of its enactment, an actual severance of certain sections from the public domain, or transfer to the State of Iowa, of a vested interest in the same.

"It is not a grant of lands by their character like a grant of swamp lands to a State, or the grant of specific sections of riparian land, fixed at the time, by the course of a river. Instead of this it is a grant on the line of unlocated railroads. To assume that in such a case the grant vests at once, would deprive the general proprietor of the use of his land, not only within six sections of a line certain, but anywhere and everywhere within every possible line. Such an effect is not to be presumed. To be conceded, it must be expressly enacted. But the act does not leave the question here, it proceeds implicitly to negative the supposed effect. *It contemplates that the United States shall retain power to convey, within all the possible limits of the grant, either by ordinary sale or on preemption, up to the time "when the lines or routes of said roads are definitely fixed;"* and provides for the case by granting, contingently, substituted lands beyond the original limits.

"In my opinion, therefore, the act, by its text, makes a conditional grant *in præsenti* in the nature of a *float* and which *does not attach to any particular parcel of the public lands until the necessary determinative lines shall have been fixed on the face of the earth.*"

The views thus expressed by Attorney-General Cushing have received the sanction of this Court in 9 *Wallace*, 89, *R. R. Co.*,

vs. *Fremont County*. In that case Judge Nelson, speaking of the Act of 15 May, 1856, says: "The *reservations* annexed to it are very full and explicit. They are *first found in the enacting clause itself*, where provision is made for the selection of lands beyond the line of the six sections on each side of the road, in case any of the sections have been previously "*sold or otherwise disposed of*;" and then *again*, in the general proviso to the grant. *These reservations*," &c.; and again, "until the line of the railroad was *definitely fixed upon the ground* there could be no certainty as to the particular sections of land falling within the grant; nor could the title to any particular section on the line of the road *vest in the company*. The grant was in the nature of a *float* until the line was *permanently fixed*,"

So also in 9 *Wallace*, 95, *Railroad Co.* vs. *Smith*.

Judge Miller, speaking of the same act, said: "No particular land was described by the railroad grant, which was a *float* to be determined by the choice of the line of the road in future."

Again, in *Vol. VIII*, Opinions *aforesaid*, *p.* 390, Attorney-General Cushing decided that the route could not be said to be "fixed" by a mere "survey or location, and adds: "I say 'definitely fixed' implies fixed *without capacity of change*."

He says, in argument, the route may be "fixed" by the Legislature by metes and bounds; or it may be "fixed" by running a line on the ground and staking it out, or by plotting it on paper; but he asks—"Is it '*definitely* fixed' even then? That is a point in the present case not so clear; for there is nothing in the text to decide whether or not the State (or the companies acting for it) *can or not withdraw a plot filed and file a new one representing a change of location*. I suppose *the law of the State may, perhaps, contain provisions on this subject*."

Clearly, then, he did not consider the lines of the road "definitely fixed" so as to give title to any particular lands, merely from the fact that the lines had been located on paper and plotted out and the plot filed, unless there was *some provision of law* making such location *final*: and upon this point he was not informed, because he had not the State law before him.

We supply this deficiency, and call attention to Section 6 of

the Law of Iowa, regranting these lands to the railroad companies, which provides that "the lines and routes of the several roads shall be definitely fixed and located on or before the first day of April next." It then provides for filing maps and plots of said routes in Iowa and in the Land Office at Washington, and adds: "*Such location being considered final only so far as to fix the limit and boundary within which lands may be selected.*"

Now, by the act of Congress, the *granted* lands are specified, to wit: "Every alternate section designated by odd numbers on *each side of the road* for six sections in width;" and the title cannot vest in the State until the road is "definitely fixed" by being actually built.

The Secretary of the Interior, Mr. Thompson, on 21st April, 1859, in construing a similar railroad grant to Wisconsin, referred to and approved the aforesaid opinions of Mr. Cushing in the Iowa case; and added: "We cannot regard a location on a map as "definitely fixing" the route until it is concluded that *no subsequent act of the State or of the United States shall change that route.*" (*Lester's Land Laws, Regulations and Decisions*, pp. 537, 538.)

In the case under consideration, as we have already seen, the Cedar Rapids and Missouri R. R. Co. was, in 1864, authorized to "*change the location*" of the portion of the road then "uncompleted," and the act made a new grant for the modified line of road, *which was a substitute* for the grant originally made by the Act of 1856; the new grant of 1864 being made *to the company*, and *not to the State;* the new grant being limited to lands THEN [1864] *owned by the United States;* with express provisions to prevent the new grant from operating to impair any previous grants, as all "vested rights of property" are by that amendatory act "*reserved and confirmed*," including such as have been made "under color of title derived from the United States, or from the State of Iowa, *adverse to the grant made by this act or the act to which this act is an amendment.*"

No title therefore vested either in the State or in the Railroad Company under the Act of 1856, or the amendment of 1864, until, and as, the road was actually built; and it was not built through the lands in question until 1865. In the language

of this court, in 9 Wallace, 89, above cited: "until the line of the railroad was *definitely fixed upon the ground*," and "*permanently fixed*" there could be no certainty as to the particular sections falling within the grant, nor could *the title* to any particular section on the line of the road *vest* in the company." And therefore the United States, even under the provisions of the Act of 1856, had full right and power to make to the State of Iowa and its grantees the confirmatory grants of 1861 and 1862, confirming and extending the river grant.

IV.—The railroad grant became operative only as the roads were constructed, and sections of at least twenty miles were finished. Then the grant attached to the alternate sections lying on each side of the twenty miles of *the finished road;* and it did *not attach to any other lands, nor any faster than the road was so finished;* and in no event could the grant run in advance of the completed road, and attach to, or affect, lands which, like those in controversy in this suit, were at least one hundred miles beyond the finished portion of the road when the confirmatory grants of 1861 and 1862 were made.

Such is the precise language of the act. The grant is of the alternate sections "on each side of the *roads:*" not on each side of the surveyed line of the *projected* improvements; but on each side of the real completed improvements, "*the roads,*" and such is the language of this court cited from 9 *Wallace,* 89. If, after the passage of the act, and before the completion of the roads, the granted lands shall have been to any extent otherwise disposed of by the Government, then the State is permitted to select other lands in lieu of those disposed of. But the act provides that "in *no case* shall the lands to be so located be *further than fifteen miles* from the lines of *said roads.*"

All of these land grants are based upon the idea that the building of a railroad, *through the public lands,* will double their value, so that the half remaining to the Government after the road is finished will have as much value as the whole of the lands if no road is constructed. This is the consideration for the grant. To secure this benefit, Congress always doubles the price of the remaining sections. If the road is built *through*

the public lands, the State gets one half of the lands through which the road passes and situated on either side of the *finished* road within the prescribed limits, leaving the other half to the Government, which it is presumed can be sold at double price.

If the State gets lands faster than the roads are built, or lying at a distance beyond the finished portion of the roads, or if it takes any lands except the half of those situated on either side of the *finished* road (which are the only lands supposed to be benefitted by the improvement), then the Government gets no consideration for the grant.

In these cases the Railroad Company claims that upon the completion of the first forty miles of its road, in December 1861, it became entitled to 153,600 acres of land; and that inasmuch as there was not that quantity of public land applicable to the grant on the sides of the said forty miles of completed road, within the prescribed and selecting limits, the grant became thereby stretched 100 to 150 miles beyond the completedroad, until it reached the Des Moines river grant, and that it at once attached to the lands in that grant, and made a good title to them in the Railroad Company.

But we deny this, and claim that the railroad grant is necessarily limited to the alternate sections of the vacant public lands which may be found on each side of the road as completed and when completed.

V.—Our construction of this act is also in accordance with the understanding of it in Congress, when it was under discussion.

Mr. Bennett, chairman of the Committee of Public Lands, reported this bill in the House of Representatives, and he said, on the discussion on the bill, "*It confines them* (the Railroad Companies) *to take the lands on the line of said roads; when each twenty miles is built, they must take the alternate sections within the twenty miles.*"

On the discussion of the bill in the Senate, Mr. Yulee said "the State *will get no lands, except for roads which pass through* the public domain." Senator Geyer said: "*Under this bill the*

title to the land will not pass out of the United States until a certain quantity of road be constructed. The title of the land is to pass out of the United States only when twenty miles of road shall have been constructed, and so fast as the road is constructed."

Senator Jones, of Iowa, said of the bill, "It provides for starting four roads from the Mississippi river, but *neither of those roads will get any land until it approaches the centre of the State. The intervening lands have already been sold and the money for it is now in the coffers of the Government.*"

VI.—And so the act was understood by the Legislature of Iowa, and by this Railroad Company when the grant was made, and is so expressed in the very act of the General Assembly, under which it makes its claims.

Sec. 5 of the act making the grant to this company provides that the act "*shall not be construed to give title to any* portion of said lands, to said company, otherwise than *as the road progresses*, and *as provided in the Act of Congress* aforesaid, conferring the lands upon the State of Iowa, namely: *when they shall have completed each section of twenty miles of road aforesaid, they shall be entitled to the amount of land apportioned thereto, and not before*;" and further provides that they shall not get the first apportionment of land until the first section of twenty miles is completed.

The record shows that the first section of the road was not completed until December 1861—some nine months after the title to these lands was perfected in the Navigation Company, by the Joint Resolution of 2d March, 1861; and that this road was not constructed through the Des Moines river lands until 1865.

If they became entitled to these lands at all, it could only be *then*—upon the completion of the road in 1865—and in the language of the act, "*not before*." But before that time the lands had been "disposed of" by the United States, and therefore the railroad company could only claim the indemnity provided by the act.

VII.—The Act of Congress of 2d June, 1864, making the grant

to this Railroad Company, shows clearly that Congress intended the company should only obtain title to the lands which were situated on each side of the *completed road*; for sec. 9 requires each company "to offer for sale, within three years from the compl tion of any section of its road, *its lands lying opposite such completed sections.*"

Third Point.—Whatever title to the lands in question has ever been vested in the State of Iowa, *under any and all of the grants made* to it by Congress, has been transferred to, and vested in the Des Moines Navigation & Railroad Company and its grantees, by the contracts, grants and patents of the State; and no title to these lands has been transferred, or *attempted to be transferred* by the State to the Cedar Rapids and Missouri River Railroad Company.

By Contracts.

The State, in 1854, by its authorized officers, sold and agreed to convey all these lands to the Navigation Company. In 1857 the Supreme Court of the State held that this was a valid contract and binding upon the State, and that an Act of the General Assembly of 1857, so far as it treated said contract as invalid, was without effect (Record Baker *vs.* Williams, p. 433). Between 1854 and 1858 the company expended $332,634 upon the improvement under the contract of 1854, and in 1858 upon a settlement with the State, the company paid in cash and materials a further sum estimated at over $100,000.

The Direct Grant of 22d March, 1858.

Upon this settlement the State, by a legislative act, made a further "contract" with the company, reciting the terms of the settlement, and on its part agreed by its proper officers to "*certify and convey* to said company" all the lands granted by Act of Congress of 8th August, 1846, which had "*been approved and certified to the State,*" and spoke of said lands as being

the lands "which are HEREBY BY THE STATE SECURED TO SAID COMPANY; and said company or its assignees *shall have right* to all of said lands AS HEREIN GRANTED TO THEM as fully as the State of Iowa could have under or by virtue of said grant OR IN ANY MANNER WHATEVER," with full power to settle all errors, false locations, omissions or claims in reference to the same, and all pay or compensation therefor by the general government."

The lands are here perfectly identified, as the lands which had "*been approved and certified*" under the Act of 8th August, 1846. This act of the General Assembly was thus a *contract* whereby the parties exchanged considerations; and in and of itself it made a direct grant of the lands therein described, and by its own force it at once vested the title in the Navigation Company, so far as the State then had the title; and in addition it contained covenants, in the nature of warranty of title, so that any after-acquired title of the State at once enured to the grantee. In the language of this Court, in 2 Howard, 319: "It was a higher evidence of title than a patent, as it was the direct grant of the fee by the Government itself."

(*See the authorities cited under the First Point.*)

BY PATENTS.

The State also, in pursuance of said law, issued its patents. These patents purported to convey a title "*in fee simple.*"

They were dated in May and June, 1858. If the State then had a fee simple title, it vested at once in the Des Moines Company. If the State did not have a fee simple title at the date of the patents, but obtained one under the subsequent Acts of Congress, that title at once enured to the Des Moines Company.

15 *Howard*, 538, *Delauriere* vs. *Ericson.*
5 *Wallace*, 681, *Wolcott* vs. *Des Moines Company.*

This rule of the common law is made a provision of the statutes of Iowa.

(*Code of Iowa, Revision of* 1860, *Sec.* 2,210.)

By an act of the General Assembly of Iowa, passed 3d March, 1860, and by another act, passed 2d April, 1860, it was

recognized that said lands had "*been conveyed to*" that Company "*by the State* by the act of 22d March, 1858," and that said lands had "been *patented* to said Company *by the State*."

I.—Even if the State acquired its title under the railroad grant made by Act of May 15, 1856, and *not* under any of the acts making or confirming the river grant, still when it became vested with the title, it had full right to sell and convey as it pleased, and its grants and patents effectually transferred the title to its grantees, the Navigation Company.

Such a transfer would not in any manner conflict with the provisions of the Act of Congress of 15th May, 1856.

The grant made by that act was to Iowa, "for the purpose of aiding in the construction of railroads" upon certain indicated routes.

The act did not prescribe the *manner* in which the aid should be granted. It was clearly competent for the State, as fast as it got title to the lands, to sell them and apply the proceeds in "aiding the construction" of the prescribed road; or it might donate lands directly to the companies which should build the road. Either mode of disposition would satisfy the law of Congress.

Section 4 of the act directed the manner in which the lands should be disposed of by the State. A quantity not exceeding 120 sections of land for each road, was authorized to be "sold" —and when the Governor of the State should certify that twenty miles of road was completed, then another quantity of land not exceeding 120 sections, might be "sold," &c. The United States constituted the State of Iowa the trustee. It certainly authorized the State to *sell* the lands, and there was no restriction upon the power of the State in this respect, except that it could only be done from time to time, as sections of twenty miles of each road were completed. A purchaser from the State, whether the Navigation Company or a stranger, had only to inquire if the State had power to sell, for if it had, then the purchaser could safely buy; and surely it was no part of the duty of the purchaser, after having paid the consideration agreed upon, to watch and see that the State made proper application of the money.

And this was so understood by Attorney-General Black, when the construction of these grants first came before this Court, in Litchfield *v.* Dubuque Co., 23 How., 66. In that case the Attorney-General intervened in behalf of the United States, and filed a printed argument; and while arguing that the grant, by the Act of 8th Aug., 1846, did not extend above the Raccoon Fork, and that therefore the plaintiff in that case did not get title *under that grant*, still he insisted that if he held the oldest patent from the State, *he had a good title*, although the State may have derived its title under the railroad grant of 1856, and not under the river grant of 1846

He said, in that case:

"When a party sells and conveys lands, he transfers all the title he has * * * * * * "I need make no argument to prove that the same facts which would estop a private individual or a corporation, will estop a sovereign State and its privies in a judicial proceeding; or that the proprietary rights of a State are governed by the same rules of common honesty that regulate those of other parties. Nor will it be said that in this case the State of Iowa was acting in two separate capacities, and that, therefore, she had a right to sell the same land twice, and get a double consideration for it. It is true that she took the two grants, with an injunction which implied a legal obligation to use the proceeds for two different purposes. *But they were both public uses, in which the State, as a State, was interested, and nobody else was properly interested in either.*" * * * * "If the plaintiff had a conveyance, *his right*, what ever it is, *will depend* on *the acts and deeds of the State in making the several conveyances to himself and the other party.* The general rule is, that where one who has no title conveys land to another, a title subsequently acquired by the grantor, enures to the benefit of the grantee. *This would give title to the plaintiff* (claiming in that case, under the river grant), *independent of the States claim under the Des Moines grant.*" * * * *

Such was the Attorney-General's argument then, assuming, as he did, that the title had passed to Iowa under the railroad grant of May 15, 1856.

II.—Even if the State derived its title, under the grant of 1856 made in aid of railroads, the Navigation Company were purchasers, in good faith, and for value—and having the patents of the State, they took a good title free and discharged from any trust created by the Act 15th May, 1856.

18 *Howard*, 188, *Cooper* vs. *Roberts*.
4 *Wash. C. C. Rep.*, 38.
4 *Wheaton*, 421.
23 *Missouri (2 Jones) Rep.*, 449 *Dunklin County* vs. *District Court*.
14 *Ben. Monroe (Ken.) Rep.*, 433, *Sims* vs. *Lively*.
1 *Wallace*, 333, *Baker* vs. *Gee*.

In the case of *Cooper* vs. *Roberts*, 18 *Howard*, 188, the grant was of lands to the State of Michigan "for the use of schools." but the State had disposed of the land for some other purpose, and this was set up to defeat the grant. The Court said:

"The trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, *over which the power of the State is plenary and exclusive.* In the present instance the grant is to the State directly, *without limitation of its power*, though there is a sacred obligation imposed on its public faith. *We think it was competent for Michigan to sell the school reservations without the consent of Congress.*" Again: "*Michigan has not complained of the sale*, and retains, so far as the case shows, the price paid for it. Under these circumstances *we must regard the patent as conclusive of the fact of a valid and regular sale.*"

In the case cited from 23 *Missouri Rep.*, the Court held that the trust created by a grant of lands by Congress to Missouri, was a trust which was *personal* to the State—but did not attach to the lands; and that a purchaser from the State held the land by a good title, discharged from the trust.

In the case cited from 1 *Wallace*, 333, Missouri had disposed of some of the granted lands for a different purpose from that named in the Act of Congress; but it was held that if the railroad company had ever had any right to object, it was waived by filing its acceptance of the State grant—and the Court said

"*the United States are not complaining, and no other party has a right to complain.*"

Neither the United States, nor the State of Iowa, in the case under consideration, complain of the sale to the Navigation Company, or seek to avoid it, and "no other party has a right to complain."

III.—The grant by the State to the Cedar Rapids and Missouri River Railroad Company, was not *intended* by the State, nor *understood by either party*, at the time the grant was made, to include any of the lands which had been certified under the Des Moines river grant.

The State had previously conveyed the lands in 1858, to the Des Moines Company; and by an Act passed on 3d March, 1860, (which was twenty-three days *before* the grant was made to the Cedar Rapids and Missouri River Railroad,) the State distinctly recognized the conveyance to the Des Moines Company, and directed that certain lands therein spoken of, should "be taken from the lands next above those *transferred by the State to the Des Moines Navigation and Railroad Company*, by the terms of settlement with that Company, authorized by Joint Resolution of the General Assembly, approved March 22d. 1858."

By another Act passed 2d April, 1860, (which was seven days *after* the grant to the Cedar Rapids Railroad Company), relating to sundry lands, which had been *sold* by the State officials to private parties, and had also been *sold* by the State to said Des Moines Company: the Act recited that—

"Whereas the State of Iowa has, by *a settlement* with the Des Moines Navigation and Railroad Company, *conveyed* said lands in whole or in part to said Company," &c.

Sec. 6 of the Act provides that "any person who has made valuable improvements upon any of said lands *patented* to the Des Moines Navigation and Railroad Company *by the State* * * shall be entitled to receive the value of said improvements made before the passage of the *Act conveying said lands to said Company, &c.*"

These Acts are a distinct and unequivocal recognition by the State:

That the lands have been "*transferred by the State*" to the Company "*by the terms of settlement*" in the joint resolution of 22d March, 1858.

And—

That "the State of Iowa, by a settlement with the Des Moines Navigation and Railroad Company, *conveyed* said lands to said company."

And—

That the lands have been "patented" to the company "by the State."

And—

That the Joint Resolution of the General Assembly of 22d March, 1858, was "*An Act conveying* said lands to said company."

IV.—The grant made by the State, to the Cedar Rapids and MissouriR. R. Company, was only *a quit claim*; which passed nothing except the title which the State had to the lands on 26th March, 1860; and the grant did not pass to the company any title acquired by the State after that date.

Section 1, of the Act provided, as follows:

"It is hereby declared to be the true intent and meaning of this act, that the State of Iowa, according to the conditions herein specified, conveys and grants to the Cedar Rapids and Missouri River Railroad Company, her right, title to, and interest, in the aforesaid lands, *and nothing more*; and in no event shall said company, have any claim or recourse against the State, for any defect in the title or conveyance of said lands;" with

another provision in Sec. 3, of the act that the company should take the grant, "with the conditions imposed, and incumbrances specified in this act, and shall in no event have any claim or recourse whatever, upon the State of Iowa, *for a misapplication of said grant*, incumbrances or conditions, in this act imposed."

Thus it is clear that the grant was *understood* to be a quit-claim.

And such Legislative grant by a State, is by law, a quit-claim only, and passes only the title which the State had at that date, and does not pass any after acquired title of the State.

1 Black. Rep., 558-378, Rice vs. Railroad Company, and cases there cited.

At the date of this grant to the Cedar Rapids R. R. Company, no portion of the road had been completed; the road had not even been commenced, and the first section of it was not completed until Dec. 1861, consequently the State had no title to any lands on this railroad route on 26 March, 1860, when this grant was made; and the Cedar Rapids R. R. Company never acquired title to any of the lands in question under that grant.

But the appellants insist that the State and the United States made an "adjustment" in 1866 of the various land grants to the State, and that that "adjustment" is binding upon all claimants under the State.

Before considering this question, it is to be remembered that since 1858, when the State conveyed to the Navigation Company, that company has had no interest in the lands belonging to the river grant, except as to the specific lands which had been conveyed to that company; and that all the "*remaining lands*" belonging to the grant were in 1858 donated by the State to the Des Moines Valley R. R. Company.

Consequently, after the passage of the Acts of Congress of 1861 and 1862, which confirmed the title of the Navigation Company, that company had no further interest in the proceedings in the Land Department, or in the legislation by Congress, relating to the River grant.

But the Valley Railroad Company had a direct interest as grantee of all the "remaining lands;" and the record shows that a director and principal manager of that railroad company acted as agent of the State in procuring from the Interior Department in 1863 the certificates of the lands under the Act of 1862, which were subsequently recognized in the "adjustment" of 1866, and confirmed by Act of Congress of 1871; and it also shows by the testimony of Mr. Harvey, the agent of the State in making the adjustment of 1866, that neither the Navigation Company, nor any of its grantees, were present at such adjustment, nor ever assented to it, but their agent frequently objected to it. So far therefore as that "adjustment" is to be deemed binding upon the State, and its grantees under the River Grant, it must be limited to such of the grantees as were cognizant of, and assenting to, the adjustment—to wit—the Valley Railroad Company to which company the State had donated that portion of the River Grant which was "*remaining*" *after* the conveyance by the State to the Navigation Company.

With these facts before us, we submit.

Fourth Point.—The adjustment made between the State and the General Land Office in 1866 could not in any manner affect the legal title to the lands, which had previously vested in the Des Moines Company and its grantees by the legislation and patents of the State in 1858.

I.—The law of Iowa under which such adjustment was made did not purport to authorize any interference with the title to any lands which the State had previously conveyed to the Des Moines Company.

II.—The "adjustment" made did not purport to divest the title which the State had once had and had already transferred to the lands in question.

Soon after the transaction—which in its terms amounted to nothing more than an entry in book-keeping, whereby the *accounts* upon the ledgers of the respective parties were made to agree—this Court, in 5 *Wallace*, 681, Wolcott *vs.* Des Moines Company, settled the construction of the Act of 15th May, 1856, granting lands for railroad purposes, and decided that none of the lands which had been approved and certified under the Des Moines River grant were included in the railroad grant, or disposed of thereby.

It followed from this decision that the "adjustment" spoken of had proceeded upon a wholly erroneous construction of the Act of 12th July, 1862, and that the State was not entitled to *indemnity* for the lands supposed to have been disposed of by the Railroad Act, and therefore the special certificate for 297,603 acres had been improperly issued.

The evident and only remedy was for the Land Office to correct the error and charge back to the State the excess in the amount thus allowed for indemnity, or to get it confirmed by Congress as an additional grant, but it cannot be taken out of our lands by virtue of any such "adjustment" between third parties.

A subsequent Act of Congress approved 3d March, 1871, has confirmed the title to the lands so certified under the Act of 12th July, 1862; which Act of Congress expressly confirmed also "any existing legal right" of other parties; thus again protecting the grants to the Navigation Company.

III.—This "adjustment" did not deny the title of the State, but on the contrary, it *admitted* the title of the State to *all the* lands included in the approved lists under the Act of 8th August, 1846.

IV.—Neither the Land Office nor the State had authority to make such an "adjustment;" and, if they had power to do so as between themselves, it was not binding upon the States' grantees—the Navigation Company—who held under the Legislation and patents of 1858.

The State had no authority at all to act in adjusting this Des

Moines River grant, *as to the lands* which it had previously conveyed to the DesMoines Company, for by the Joint Resolution of 2d of March, 1858, the State transferred to that company, not only the lands, but also "full power to settle all errors, false locations, omissions or claims in reference to the same, and all pay or compensation therefor by the General Government."

The State thus granted to the Navigation Company the lands which had been certified, and if any errors had been made by the officers of the United States, the State gave said company "full power to settle" said "errors" and all "claims in reference to the same;" and, if the claims were well founded and should be recognised by Congress, then the State transferred to said company "all pay or compensation therefor by the General Government."

After this legislation *the State* had no power to act in any of these matters to the prejudice of said Company or its grantees.

Nor had the Land Department: for the Act of Congress of 12th July, 1862, gave a construction to the Joint Resolution of 2d March, 1861, and declared the lands therein relinquished to have been "released by the United States *to the grantees* of the State of Iowa." This language includes *all* grantees of the State; not merely, as is argued by the appellants, *settlers*, but all *grantees;* not merely *some* grantees, or *bona fide* grantees, or any other class of grantees, but "*the* grantees"—that is to say, *all* grantees of the State.

Consequently no department of the government was justified after 12th July, 1862, in dealing with the State in regard to those lands, in any manner which could prejudice "*the grantees*' of the State; for by that Act of 12th July, 1862, Congress had declared that the lands relinquished by the Joint Resolution belonged *not* to the State, but to *its grantees.*

And by the same Act of 12th July, 1862, Congress had expressly *consented* to the application of a portion of the lands thereby granted to aid in the construction of the Valley Railroad, "*in accordance with the provisions of the Act of* the General Assembly of the State of Iowa, *approved March* 22, 1858." By the act thus referred to, the State had granted *the certified* lands

to the Navigation Company, and the "*remaining* lands" to the Valley Railroad Company; and Congress *consented* to this disposition of the lands by the Act of 12th July, 1862. And the Land Office therefore, when acting, in 1866, under the Act of 1862, could not fail to know that all its authority over the lands, which had been certified under the Act of 8th August, 1846, had terminated, *at latest*, on 12th July, 1862.

V.—The State had no power to repeal, directly or indirectly the Joint Resolution of 22d of March, 1858, granting these lands to the Des Moines Company, after it was accepted by the company, for it was a *contract* under which private rights had become vested. And such an attempt by the State would be an act impairing the obligation of contracts, and therefore unconstitutional and void.

As a general proposition, it is unquestionably true, that one Legislature may repeal a law enacted by its predecessor; but such repeal cannot defeat private rights which became vested before the repeal; and, when an act of legislation is in, and of itself a contract, it cannot be repealed.

At page 135, of 6 *Cranch*, Ch. J. Marshall, in stating this general principle, says: "But, if an *act* be done under a law, a succeeding Legislature cannot undo it. The past cannot be recalled by the most absolute power." Again: "*When, then, a law is in its nature a contract*, where absolute rights have vested under that contract, a repeal of the law cannot divest those rights." At page 137: "A grant, in is own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to re-assert that right. A party is, therefore, always estopped by his own grant."

While making this argument as to the want of power in the State to invalidate the previous grant to the Navigation Company, as we do to meet the points of the appellants, it is only just to say:

VI.—The State of Iowa has *never attempted* to invalidate the title which it transferred to the Navigation Company, but, on the contrary, by its legislation, and by the action of its executive and judicial authorities, has always sustained it.

Here, again, for greater certainty, and to make our position entirely clear, we wish to discriminate between the acts of the State, when acting for itself, and by and through its regularly constituted authorities, and the acts of beneficiaries of grants to the State, who in their dealings with the Land Office have acted in the name of the State, but in their own special and peculiar interests.

The counsel for the appellants make sundry criticisms, as to the various acts of Congress, and their proper construction, to which we do not agree; and we say:

Fifth Point.—The arguments of counsel who appear in behalf of the railroad title as to the proper construction of the various Acts of Congress, including the Railroad Act, of 15 May, 1856, the Joint Resolution of 1861, and the Acts of 1862 and 1871, are not well founded.

In support of the railroad claim to title, it is urged that the *Proviso* to the Act of 1856 was not intended to have the effect which this Court gave to it in the case of Wolcott, 5 Wallace, 681: that Congress had no official information as to the previous action of the Executive departments in the administration of the Des Moines River Grant, and that it therefore, cannot be reasonably intended that Congress legislated with reference to any such previous action of the Executive departments; and that the *proviso* was only intended to reserve to the United States the *even* sections within the limit of the River Grant.

The answer to the theory that the Proviso was intended to apply to those even sections is that they never had been reserved to the United States. The Acts making railroad grants have always made provision for reserving to the United States the alternate sections, and for doubling the price; but no such provision was contained in the Act of 8th August, 1846. The even sections within the limit of the River Grant remained liable to be taken on preemption or by purchasers, the same as

any other public lands; and in fact, they have been so disposed of, and for more than a hundred miles in extent through the Des Moines Valley the even sections have been long since sold and occupied, while the odd sections have been reserved for the Des Moines River Grant. It is not, therefore, possible to hold that the Proviso in the Act of 1856 was designed to apply to those even numbered sections.

We understand that the *proviso* is to have effect because it is found in the act; and that it is no part of our duty to show that Congress had good reasons for placing it there, nor what those reasons were.

Still, it is easy, by some repetition, and by again recurring to the history of the River Grant, to show why Congress inserted the proviso in the act.

In 1849, when Secretary Walker decided that the River Grant extended above the Raccoon Fork to the source of the river, and sent his decision to the Land Commissioner "for his government" in the administration of the grant, the Land Office ordered all the odd sections in the grant as thus construed to be "withdrawn from sale," and they were thenceforth withheld from sale and *reserved* for the purposes of this grant. Secretary Walker, Secretary Ewing, Secretary Stuart and Secretary McClellan continued the reservation of the lands for this purpose; and as the surveys progressed the lands were certified to the State in 1851–1853; and they were entered upon the books of the general, and of the local land offices, as "Granted to the State of Iowa for Des Moines River Improvement, by act of August 8, 1846." The annual report of the Commissioner of the General Land Office in 1850, communicated to Congress, estimated the quantity of the lands included in this grant "Situated between the Raccoon Fork and the source of the river" at 900,000 acres. In 1854 the State of Iowa, by its contract with the Navigation Company, had sold to that company all the remaining lands belonging to the grant—then estimated at 1,000,0 0 of acres for $1,300,000, to be expended upon the improvement of the river. The grant was administered in accordance with the foregoing decisions until 21 March, 1856, prior to which time there had been certified to the State 271,572 acres out of an estimated total of 900,000 acres situated above the Raccoon Fork.

On the 21st March, 1856, the Commissioner of the General Land Office decided that the grant did not extend above the Raccoon fork of the river, and refused to certify any more lands.

This at once deprived the State of the means to pay the Navigation Company for further expenditures, and of course made it necessary for that company to suspend its work upon the improvement. The company appealed to the State for relief from this condition of affairs, and the State applied to the Department at Washington to overrule the decision of the Commissioner of the General Land Office. The Secretary of the Interior referred the question to the Attorney-General for his opinion, and *the matter was pending in the Attorney-General's office, and undecided by him, when the Act of May* 15, 1856, *was passed.* Congress knew that the executive officers had reserved these lands for the purposes of the river grant, and that from time to time they had certified them to the State, intending thereby to transfer the title; and the question was just then presented again by the action of the Land Office, whether, in law, these lands were included in the river grant.

This question was then in the Attorney General's office for decision; and Congress determined by this *Proviso* to continue the reservation which the Land Office had made until the matter was decided.

In effect, Congress said, we will reserve these lands from this railroad grant, and thus retain the power to make good to the State of Iowa and its grantees the acts of our executive officers, in case the title has not already been transferred to the State. Such we may fairly presume was the object of the proviso.

But we are not left to presumption on the subject.

While this railroad act was pending in Congress, Senator Jones, of Iowa, wrote to the Land Office for a statement of the number of acres embraced in the proposed grant. In reply, on 12th May, 1856, the Commissioner furnished Senator Jones with an estimate of the quantity of land which would enure to the State, under the bill, in which occurs this remark:

"Deduct for Des Moines River Grant, which crosses four times, 153,600 acres."

This was only three days before the bill passed, and shows that Senator Jones was intending and prepared to protect the Des Moines River Grant from being interfered with by the Railroad Act.

So again in the other House of Congress. Mr. Bennett was chairman of the Committee of Public Lands, which reported the Railroad Bill of 15th May, 1856; and he also applied to the Land Office for an estimate of the quantity of lands which would pass to the State under the proposed grant. At page 336 of the record of the Iowa Homestead Company Appellants *vs.* The D. N. & R. R. Company and others will be found a statement as to the answer furnished to him, which statement is as follows:

"GENERAL LAND OFFICE, May 28, 1856."

"This is to certify that in the report from this office to the Committee on Public Lands of the House, on which was based the bill No. 17, approved May 15, 1856, granting lands to Iowa for certain railroads, the estimate of the land which would be conveyed by the said bill was founded on the construction of the Des Moines River Grant, to the effect that that grant extended to the source of the Des Moines River, and the alternate sections in a strip five miles in width on each side of the Des Moines River, above as well as below the Raccoon Fork, *were reported as excluded from the amount of land that would pass* by that bill *and reserved from its operation.*

A. R. PARKER,
Draughtsman Ho. Reps."

"The above statement of Mr. Parker is correct.

H. BENNETT,
Chairman House Committee on Public Lands."

Thus we see that all these Des Moines River lands "above as well as below the Raccoon Fork *were reported as excluded from* the amount of land that would pass by the Railroad Bill and *reserved from its operation.*"

Upon this understanding, and with this intention Congress passed the railroad act of May 15, 1856. That act, in desig-

nating the lands which were excepted from its operation, *has taken the very words* of the act of 8th August, 1846, to describe them, to wit: lands reserved "*for the purpose of aiding*" in an object of "internal improvement."

It is not pretended that any other "internal improvement" was then in progress in Iowa which Congress was "aiding" by an appropriation of lands. But it was a matter of public notoriety that such a grant had been made to Iowa for the "improvement" of the Des Moines River. That grant had been constantly before the Executive Department for ten years—from 1846 to 1856—for construction and administration. Four Secretaries of the Treasury, and of the Interior, had made official decisions as to its extent; four different Attorney-Generals had given their opinions on the subject; the result of all which was that the Act was being administered upon the understanding that the grant embraced the lands above as well as below the Raccoon Forks. The State had incurred liabilities and made large contracts based upon those lands as the fund for payment; and after thus prosecuting this "improvement" for seven years, the question was suddenly raised that the title to the land was doubtful, and this question was at that moment in the Attorney-General's office for consideration. The Senators and members of Congress from Iowa knew that the lands, for seven years, had been "reserved" for the purpose of aiding in the improvement of the river, and they took the proper steps to get the facts from the Land Office, and to bring them to the knowledge of the Committee of Public Lands which reported the bill in the House of Representatives; and finally, we have the certificate of the chairman of that committee showing that it was the "Des Moines River *improvement*" which Congress had in view, and that the lands included in the grant for that improvement were *excluded* from the lands which would pass by the Act of 1856, and that the exception in the Act of 1856 was specially designed to save from its operation the lands which had been "reserved" for "*the purpose of aiding*" in that improvement.

It would not be clearer if the act had, in terms, excepted from its operation the lands which had been certified and approved under the Des Moines River Grant.

But it is also said that at that date some of the lands had been already certified to the State; and that therefore it was improper to speak of them as "reserved to the United States."

This whole grant had been reserved—at one time, and as one entire thing—and only 271,572 acres of the land above the Raccoon Fork had been certified out of the total then estimated at 900,000 acres. The original reservation was made in 1849, upon the joint application of the entire Iowa delegation in Congress to Secretary Walker, who then decided that those lands had been granted for the purpose of aiding in the improvement of the river, and instructed the Land Office accordingly, which at once reserved the lands. It was this reservation of the entire grant for this specific purpose which Congress had in view; and the language of the act pointed to the reservation;—"all lands *heretofore reserved* to the United States for the purpose of aiding in any object of internal improvement."

All reservations of lands from sale, or disposition, for any purpose, "*by* the United States," are necessarily reservations "*to* the United States"—the general proprietor of all the public lands—although the object of the reservation may be to save them for the States to which Congress may have granted them.

In 1849 the lands were only partially surveyed—they must first be surveyed before the odd sections could be determined and certified. But the entire grant was "reserved to the United States" for the purpose of being surveyed and then transferred to the State—and the certificates were issued only as the surveys progressed; and on 15th May, 1856, the surveys had not been completed.

Again, it has been argued that the Joint Resolution of 2 March, 1861, only "relinquished the title" which the United States still retained, "to *a part of the grant*," by Act of 8 August, 1846; and therefore, it has been said that, as the United States only retained title "to a part" of those lands above the Raccoon Fork, it must have been intended that the railroads had taken title to the remainder of them, under the Act of 15 May, 1856.

A sufficient answer to this criticism, is the simple reading of the Joint Resolution. It did not profess to relinquish any title "*to a part*" of the lands; but it relinquished "all the

title" which the United States still retained in tracts of land which had been "improperly certified *as part* of the grant by Act of 8 August, 1846." *All* the lands above the Raccoon Fork, which had been certified, had been 'improperly certified *as part* of' that grant: all stood in the same condition: 271,572 acres had been certified out of a claimed total of 900,000 acres: consequently the total of the certified lands was only "*a part*" of the grant, supposed to have been made by the Act of 8 August, 1846; and they were "improperly certified," because that grant did not extend above the Raccoon Fork, as this Court decided in 23 How., 66. But Congress designed by the Joint Resolution to make the certificates and the title, good as to the 271,572 acres, thus "improperly certified" as part of the grant of 8 August, 1846.

It is also claimed that the joint resolution only referred to "a part" of the certified lands above the Raccoon Fork, because the Secretary of the Interior, in his letter to the committee, recommending the passage of the resolution, had said, in substance, that the State would get title, either under the grant of 8th August, 1846, or under the railroad grant of 1856—as it would have done if the lands had not been reserved and excepted from the operation of the Act of 1856. Counsel quote from the Secretary's letter, but omit that part of it in which he recommended that title should be relinquished as to "*all* the lands which *have been sold, granted or conveyed* by the State."

They also refer to a portion of the report of the Committee of Public lands of the House of Representatives, which reported the joint resolution, but omit this part of it: "In the judgment of your committee, it would be an act of gross injustice for this Government to repudiate the acts of its own highest officers, and thus deprive those persons of their possessions who have paid their money on the faith of the Government."

This quotation shows that the committee intended to make the title good to *all* purchasers from the State; and that they thought any other course would have been "an act of gross injustice."

Again, it is said that this Court has never passed upon the

construction of the joint resolution of 2d March, 1861, and that, therefore, that is an open question.

We think that the counsel are alone in this opinion. The Secretary of the Interior, in 1870, wrote to the Commissioner of the Land Office that, in the case of Welles *vs.* Riley, "the Supreme Court held that *the joint resolution*, and the Act of 12th July, 1862, *confirmed the title*" in the Navigation Company, and directed him to govern his official acts accordingly. And in the opinion in the case of Welles *vs.* Riley, his Honor, Judge Nelson, in stating what the Court had decided in the Wolcott case, spoke of "*the resolution of Congress, of March 2d*, 1861, and act of Congress of July 12, 1862, *which acts*, WE HELD, *confirmed the title in the* Des Moines Company."

Again, it is argued that the Navigation Company was not a "*bona fide* purchaser" from the State, because, in 1858, when it took its patents from the State, it knew that doubts had been expressed by the Commissioner of the Land Office, as to the extent of the grant. In reply, we say, that the company made its contract of purchase from the State, in 1854, and paid more than $332,000 of the consideration before any such question arose; and at the time when the company finally settled with the State, and took its patents in 1858, it had in its possession official decisions of the Attorney-General of the United States, dated 29th May, 1856, and of the Secretary of the Interior, dated 10th November, 1856, which appear in the record, holding that the title to the lands which had been certified under the act of 8th August, 1846, had been "*divested from* the United States, and *vested in* the State of Iowa."

It is also argued, that by the Act of 12th July, 1862, the Secretary of the Interior was charged with certain duties in regard to these land grants, which, by implication, authorized him to make the "adjustment" of 1866, and that therefore that adjustment is binding upon the Navigation Company and its grantees.

It is admitted that the Act of 12th July, 1862, in terms embraced all the lands in controversy, and distinctly granted them to the State. And the Act provided that the lands thus

granted should "be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Des Moines Valley Railroad, in *accordance with the provisions of the Act of the General Assembly of the State of Iowa*, Approved March 22d, 1858."

That Act of the General Assembly of Iowa, thus consented to, was the Act of Settlement with the Navigation Company, in and by which all the lands *which had been certified* under the Act of 8th August, 1846, were granted and conveyed to the Navigation Company, and all "the remaining lands" belonging to the grant were donated to the Valley Railroad Company to aid in the construction of its road, *provided* Congress should consent.

Now, the lands which were thus granted to the Navigation Company by the State, in 1858, and which grant Congress thus again ratified by their Act of 1862, had been ascertained, by the Interior Department in 1851-53, and had been then certified to the State; and there can be no pretence for saying that Congress designed, by the Act of 1862, to direct the Secretary of the Interior *again* to ascertain those lands and their quantity, and that he thereby became invested with power to act in relation to those lands, and to *cancel the original certificates*, and to *issue new certificates* for the benefit of other parties.

Finally, the counsel refer to the Act of Congress of 3d May, 1871, and argue that that Act, and all the previous Acts are *in pari materia*, and are to be construed together, and that, all taken together, they justify and confirm the "adjustment" of 1866, made many years after our rights had been vested; and that therefore, by the action of third parties, in our absence and against our protest, we are to lose the property which we paid for more than fifteen years ago—our title to which has been repeatedly recognized by the State and by the United States—in order that the State may donate it to this railroad company.

That Congress had no idea of giving any such effect to the Act of 1871, confirming the adjustment is evident from the care taken in that act to provide that it shall "not be construed to affect adversely any existing legal rights."

If the argument that this "adjustment" could take away our title, is not sufficiently answered by the statement of it, all that we could say upon the subject would be unavailing.

One other remark, however, we will make, and that is, that, taking all the Acts of Congress together, and all the acts of the executive officers of the United States, and all the acts of the State of Iowa, from 1854, when the State first contracted with the Navigation Company, up to and including 3d March, 1871, when the last Act of Congress was passed, not a single line can be found showing that either the State or the United States has deliberately sought to repudiate the State's contract with that company, or to invalidate the titles which it transferred to it; but on the contrary, everything shows a fair and honest effort, on the part of the authorities of the State and of the United States, to make good to all purchasers the titles which they took, relying upon the acts of the highest officers of the Government; and we believe that whenever this Court shall determine to overthrow three of its former well considered decisions regarding titles to real property, upon which sellers and purchasers and the General Land Department have been acting for six years, it will be in some case where a stronger appeal can be made to its sense of justice than can be made by those who seek to rob innocent purchasers of 200,000 acres of land which they have honestly paid for, in order that the State may add this quantity to nearly three millions of acres which it has already donated to these railroad companies.

Such are the arguments which have been urged in behalf of the railroad claims to these lands; and when these arguments were exhausted, counsel had still the old resource of "abusing the plaintiff's attorney," which has been resorted to in the charge that the case of Wolcott, in 5 Wallace, 681, was a fictitious case, and designed to impose upon the Court. Self-respect requires us to repel this imputation in the strongest language which is admissible in this high tribunal; and respect for this Honorable Court requires us to add that any attempt by parties or by counsel to impose upon the court, and thus to improperly affect its decision in matters depending as these titles do, simply upon the construction of statutes and public

records, would be as absurd and impossible of execution as the charge is gratuitous and uncalled for.

And we say :

Sixth Point.—The allegation made by the appellants, that the case of Wolcott, 5 Wallace, 681, was a fictitious case, and designed to impose upon the court, is utterly unfounded.

That the case of Wolcott was a case in which the parties desired to present all the known facts to this court, without unnecessary expense or delay, in order, by an authoritative decision to learn what their rights really were, and where the title to the lands in controversy was really vested, is not denied. But that there was any attempt to impose upon the court by any misstatement of facts, or by any concealment or omission of any material fact, or by any want of fair and thorough argument, or in any other manner whatever, in order to mislead the court, or to obtain an unfair or improper decision, is unqualifiedly denied. The case was fully and fairly presented upon the facts, and upon *all* the material facts, and was patiently heard, and carefully tried at the Circuit, before that distinguished judge who has so recently retired from this Court, after fifty years of illustrious judicial service, and when it came here, his judgment was affirmed without dissent.

And—

The personal recollection of the members of the court, as well as the record will bear witness, that upon the hearing, arguments were submitted, not only by the parties to the record, but also by eminent counsel in behalf of two of the three railroad companies, not parties to the record, but then supposed to be interested in the questions involved. And the case was continued by the court for an entire year, after the parties to the record had submitted it upon their printed arguments, in order to give most ample time and opportunity for all others who desired it also to prepare and file arguments. And we refer the court to the printed statement of facts, submitted by the appellees, to show that every material fact which was

necessary or proper to be brought before the court, was contained in the record, in the Wolcott case, as well as in the Welles and Riley case, and in the cases now under consideration.

It is a well known practice in this Court to allow parties to be heard upon an "agreed statement of facts," and in many States, including New York and Iowa, statutory provision is made requiring all Courts to hear and decide upon the submission of such cases. All such cases, where the facts are of record and undisputed, must necessarily be made up by the friendly co-operation of parties: And if succeeding litigants may successfully claim that such co-operation, from the mere fact of co-operation, is an imposition upon the Court, so that its decisions are to be without weight, then the attempt of Courts and of Legislatures to enable parties to ascertain their rights, with the least possible delay and expense, through the submission of an agreed statement of facts, is a delusion and a snare.

The same objection here urged, was made in the case in 23 Howard. But the court said that was "an agreed case, made up in a friendly spirit," and that "the object was to try the title," and that "this was done at the instance of some of the executive officers:" And the Court determined the question of title.

In the case of Wolcott, in 5 Wallace, the same objection now raised was made upon affidavit, and also in the arguments of both of the parties who intervened; but the court disregarded the objection, and decided the question of title.

An earlier case of Burr *v.* Des Moines Company came up to this Court by writ of error from Iowa, and was decided here at December Term, 1863. In that case, the court said: "The parties considered it an agreed statement of facts, on which the Court below might decide the law, and on which this court would review that decison. And it is quite true that this Court has decided in the case of the United States *v.* Eliason, 16 Peters, 291, and in several cases since that one, that this may be done." In the case of Burr here referred to, the Court dismissed the writ of error for defects of form, adding "thus leaving the parties at liberty, if they can do so by a proper agreement in the court below, to remove the difficulties which now prevent this Court from reviewing the case."

It is thus very clear that this Court sees nothing objectionable in that degree of co-operation between parties which is necessary to agree upon, and to present the statement of facts.

In the present case an attempt was made to show some improper arrangement between Wolcott and the Navigation Company in relation to the suit: and Wolcott's testimony was taken, which is in effect that he brought the suit upon consultation with other members of his wife's family interested with him in the lands; that prior to the commencement of the suit he had conversation and correspondence with the president of the company; that nothing was ever said about the costs of the suit being paid by the company; that Wolcott paid all the costs himself with his own means; and that when he brought the suit he supposed the company to be good and solvent, but had no particular acquaintance with its financial condition. This is Wolcott's testimony, and all of it; and if it sustains a charge of improper connivance between the parties, it necessarily follows that parties intending to prosecute must always strike first and negotiate afterwards, instead of reversing the process, as is usually done, to avoid unnecessary and expensive litigation.

But the appellants, in their bill of complaint, and in their argument, allege that the Wolcott record omitted certain matters which ought to have been brought to the attention of the Court. We will state those allegations, and reply to them *seriatim*.

1st. That the Wolcott record, in quoting the proviso to the Act of Congress of May 15, 1856, omitted the words, "to the United States," after the word "reserved," where it is used for the second time in the proviso.

We reply: If this be so, it was probably the error of the printer or of the copyist who prepared the copy of the record for transmission from the clerk's office in New York to Washington.

But the error was wholly immaterial, for the meaning of the proviso is precisely the same, whether read with or without the omitted words.

All reservations of lands "*by* the United States" are necessarily reservations "*to* the United States:" as the United States is thegeneral owner, and a reservation is simply an order not to sell or dispose of the land, but to retain the title in the United States.

Nor was it at all necessary to set out a copy of the proviso in the record. This Court will always take judicial notice of public statutes, and of all their provisions.

But the arguments of counsel in the Wolcott case brought the precise language of the proviso before the Court. The printed argument of Mr. Cook and Judge Trumbull contained a copy of the entire section, with the proviso at large, in *haec verba*.

Page 450, *Record, Iowa Homestead Co.* vs. *Des Moines N. & R. R. Co. and others.*

Finally, we submit that it is a reflection upon this Court, which is without excuse, to assume that, after such elaborate are guments, and such full consideration, the Court may have decided upon the construction of the statute without knowing what its language was.

2d. It is alleged that the Wolcott record did not set forth with sufficient distinctness the fact that on 7th April, 1863, the Secretary of the Interior had certified to the State, as passing to it under the Railroad Act, some of the lands which had been previously certified to the State under the river grant.

Page 4, *Record, Cedar Rapids R. R. Co.* vs. *Martindale and others.*

We reply: The Wolcott record *did* show the fact that the Secretary had made the certificates of 7th April, 1863, and that they *included the lands in controversy in that suit;* which lands had thus been certified under *both acts:*

Page 121, *Record of Baker* vs. *Williams, where the Wolcott record is reprinted.*

And the arguments of all the counsel turned upon that very question, *under which act* had the title been transferred to the State.

It is also alleged that the Wolcott record omitted—

3d. "The special certificate of the Commissioner of the

General Land Office of April 25, 1863, authorizing the State of Iowa to select 300,000 acres of indemnity lands," &c.

Page 3 *Record Cedar Rapids R. R. Co.* vs. *Martindale and others.*

We reply: That certificate (see page 71 of Baker *vs.* Williams, Record) was not of the slightest moment as affecting the controversy in the Wolcott suit. There was nothing in its terms to show that it contemplated any interference with the title of the Navigation Company. It was a mere license to the State to make indemnity selections; and it bore date more than two years after the passage of the Joint Resolution of 2d March, 1861, and nearly one year after the Act of Congress of 12th July, 1862, which resolution and Act of Congress, it was argued and decided, in the Wolcott case, confirmed the title in the Navigation Company.

There is nothing in the case to show, and it is not probable, that the parties to the Wolcott suit *knew of the existence* of this certificate when that suit was tried, as it was merely a "*special*" certificate, and not likely to be brought to their notice.

Finally, it is claimed that the Wolcott record omitted—

4th. "The settlement between the United States and the State of Iowa, made in the year 1866, commonly known as the Harvey settlement," &c.

Page 3 *Record Cedar Rapids R. R. Co.* vs. *Martindale and others.*

We reply: That settlement was made nearly two years after the Burr suit *had been tried* at the Circuit, and more than seven months after the Wolcott suit had been *tried at the Circuit*, and *more than four months after both cases had been submitted upon printed arguments by the parties to the record in this Court.*

Page 364, *Baker* vs. *Williams, Record.*

And yet the fact that this "settlement" or "adjustment" of 1866 did not appear in the Wolcott record is seriously insisted *upon in the bill of complaint* of the Cedar Rapids Railroad

Company as evidence that the Wolcott suit was fictitious and fraudulent, and designed to impose upon the Court!

Page 3 *Record Cedar Rapids R. R. Co* vs. *Martindale and others.*

The Court will judge what importance to attach to charges so freely made, and so utterly unsustained.

Upon the arguments of all parties who desired to be heard, and after full consideration, as above stated, this Court determined the case of Wolcott; and having there settled the principles involved, the case of Burr was decided in accordance therewith.

Subsequently, the case of Welles *vs.* Riley, came up from Iowa—litigated vigorously—with all the equities in favor of Riley which could be derived from a long settlement under a preemption entry. All the points involved were again elaborately argued. But the Court said that they could not distinguish the case "*either in the facts* or in the argument" from the preceding case of Wolcott.

Substantially the same facts are again before this Court in the records here presented. And the same *material* facts, in addition to a vast number which are immaterial, will always come before the Court when the question of title to these lands is involved.

Upon the facts now presented, either with or without reference to the prior decisions made in this Court, we again ask its judgment as to our title.

After the many years of vacillation and uncertainty as to this title in the Executive Departments, it is hoped that the decisions of this Court will furnish something stable—upon which all parties in interest may safely rely—for *certainty* in regard to the title is the greatest boon which can be conferred upon the residents through nearly one hundred miles in extent of the Des Moines Valley. When all claimants shall comprehend that the decision of this Court upon the question of title involved is fixed—"definitely fixed"—"fixed without capacity of change"—this long controversy will be terminated, and the docket of this Court will be correspondingly relieved.

EDWIN C. LITCHFIELD,
Of Counsel.